

Supreme Court of the United States

OCTOBER TERM, 1966

No. 103

JOE NATHAN COOPER, PETITIONER,

vs.

CALIFORNIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

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[fol. 1]

**BEFORE THE GRAND JURY OF THE
COUNTY OF CONTRA COSTA
STATE OF CALIFORNIA**

No. 7744

[File Endorsement Omitted]

**INVESTIGATION OF ALLEGED VIOLATION OF SECTION 11501
OF THE CALIFORNIA HEALTH AND SAFETY CODE (SALE
OF HEROIN), AND SECTION 245 OF THE CALIFORNIA
PENAL CODE (ASSAULT WITH FORCE LIKELY TO PRO-
DUCE GREAT BODILY INJURY), BY JOE COOPER**

MARTINEZ, CALIFORNIA, Monday, January 15, 1962

**HONORABLE DANA F. SPRAGUE, Foreman, and a
quorum of Grand Jurors,**

**REPORTER'S TRANSCRIPT OF TESTIMONY TAKEN AND PRO-
CEEDINGS HAD IN HEARING BEFORE THE GRAND JURY—
filed January 25, 1962**

APPEARANCES:

**For the People: Thomas Curtin, Esq.
Deputy District Attorney
County of Contra Costa
State of California**

**Douglas Quinlan, Esq.
Deputy District Attorney
County of Contra Costa
State of California**

[fol. 3]

PROCEEDINGS

**THE FOREMAN: (Addressing Court Reporter) You
do solemnly swear that you will honestly and correctly
take down in stenotype or shorthand all of the pro-**

ceedings in this matter now pending before this Grand Jury, and that should an indictment be returned in this matter, you will honestly and correctly transcribe your notes in typewriting and file them with the Clerk of this Court, pursuant to law?

THE REPORTER: I do.

THE FOREMAN: The Statement of the matter to be considered and the person to be charged.

At this time it is my duty as Foreman of the Grand Jury to state to all of you who are present that the matter that is to be considered next involves alleged violations of Section 11501 of the California Health and Safety Code, and Section 245 California Penal Code, to-wit, sales of heroin, and assault with force likely to produce great bodily injury.

The person to be charged with the offenses is Joe Cooper, and I further direct any member of the Grand Jury who has a state of mind in reference to the case or to the party named which will prevent you from acting impartially and without prejudice to the substantial rights of the party, to retire.

(No member of the Grand Jury retired)

MR. CURTIN: We are ready to proceed, Mr. Foreman. We will call as our first witness, Mr. Armenta.

STEVEN ARMENTA,

called as a witness before the Grand Jury of the County of Contra Costa, having first been duly sworn, was examined and testified as follows:

[fol. 4]

DIRECT EXAMINATION

BY MR. CURTIN:

Q Mr. Armenta, your full name and your address, please, for the ladies and gentlemen of the Grand Jury.

A Steven Lawrence Armenta, A-r-m-e-n-t-a, 4127 Irving Street, San Francisco.

Q And what is your business or occupation, sir?

A I am an agent for the Bureau of Narcotic Enforcement, Department of Justice, State of California.

Q How long, sir, have you been an agent for the State Narcotics Bureau, for the State of California?

A Approximately one year.

Q Now, Mr. Armenta, I am going to recall your attention to the 21st of December, 1961, and ask you if you remember that date, sir.

A Yes, sir, I do.

Q And did you on that occasion have occasion to meet a person by the name of Frank Green?

A Yes, sir, I did.

Q Will you tell the ladies and gentlemen of the Grand Jury your occasion for having met that person?

A On the 21st of December, Green was placed under arrest by myself and one of the other agents of our Bureau, and a police officer from the Richmond Police Department.

Q And did you have occasion to meet Mr. Green at the Richmond Police Department?

A Yes, sir, I did.

Q And who else was with you, sir?

A Agent Groom, and I believe it was Officer Stumph of the Richmond Police Department.

Q And sir, did you have occasion to have a conversation with Mr. Frank Green regarding a Joe Cooper?

[fol. 5] A Yes, sir, I did.

Q What did you do in relation to Mr. Frank Green, sir?

A Well, during the course of the interrogation of Green, Cooper came into the conversation, and Green stated that he could purchase narcotics from Cooper.

Q And after you had this conversation with Green, what did you do in relation to Mr. Green?

A We asked Green if he would, if he was willing to make a purchase of narcotics under our supervision that day. And he said he would.

Q And, sir, what did you do then after he agreed to do so?

A Green was then searched by Agent Groom, and he was furnished with twenty dollars State funds.

A federal agent and myself then took Green to the downtown area of Richmond, where he placed a phone call to Cooper's residence.

Q Now, the search made of Mr. Green by Mr. Groom, was that done in your presence?

A Yes, sir, it was.

Q And for the record, who is Mr. Groom?

A He is one of the agents from the Bureau of Narcotics Enforcement, State of California.

Q Was the search completed in your presence, sir?

A Yes, sir, it was.

Q Did you participate or aid in the search?

A No, sir. I was just standing by.

Q Who was the federal agent that went with you and Mr. Green?

A Mr. Lee.

Q And Mr. Lee is a member of the Federal Narcotics Bureau in the San Francisco Office, is he, sir?

A Yes, sir, he is.

[fol. 6] Q Now, then you had accompanied Mr. Green, you said, to a phone?

A Yes, sir.

Q And where was this phone located?

A It was in a parking lot between 10th and 11th Streets on Nevin.

Q In whose vehicle did you go to reach this phone?

A We went in Agent Lee's vehicle.

Q There were then how many of you in the vehicle?

A Three of us.

Q That is yourself, Mr. Lee, and Mr. Green?

A Yes, sir.

Q Then will you tell us what you did at the phone booth?

A Green and I both got in the phone booth, which is fairly cramped, you might say, and I attached what we call a twin phone to the telephone so that I could listen to the conversation, the conversation between the two parties.

Then Green was furnished with a dime and he dropped it in and dialed Cooper's telephone number.

Q Well, sir, will you tell us, did you observe the number being dialed?

A Yes, sir, I did.

Q And what number did you observe being dialed?

A I believe BE 2-1879. Mrs. Gulleys Phone No.

Q And whose number is that, sir, to your knowledge?

A To my knowledge that is Mr. Cooper's number.

Q What knowledge did you have as to where Mr. Cooper lived?

A Well, previously other calls had been placed to that residence, and also we checked out the residence phone number.

Q You had done this of your own personal activity and knowledge, sir?

A Yes, sir.

[fol. 7] Q Had you had occasion to know what address this phone number was at?

A Yes, sir, we did. That was checked out also.

Q What address was that, sir?

A I don't recall the address at this time.

Q Now, Mr. Armenta, did you hear a voice, on the phone when Mr. Green made the call?

A Yes, sir, I did.

Q And what voice, or tell us what you first heard.

A The first voice was a female voice answering the phone, and then Mr. Green asked for Joe. At that time the female voice called to Joe, and then the next voice was, to my knowledge, Joe Cooper's voice.

Q And had you heard that voice prior to that occasion?

A Yes, sir, I had.

Q And after that occasion, did you hear that voice again in some other place?

A Yes, sir. I heard it when Mr. Cooper was being interrogated.

Q Where was he interrogated, sir?

A At the Richmond Police Department.

Q At the time did you recognize his voice to be the voice that was on the phone on this occasion?

A Yes, sir.

Q Now, sir, what was said on the phone at that time by Mr. Cooper and Mr. Green?

A Well, Mr. Green said, "Joe?"

And he said, "Yes."

And he said, "How are things?"

And I believe Cooper said, "All right, I guess."

Then Green said, "How about a deuce?"

And Cooper said, "Yes, all right."

[fol. 8] And then I believe Green said, "What do you want me to do?"

And Cooper kind of hesitated and said, "Let's see", something like that.

And then Green said, "Well, how about Newell's? How about Newell's?"

And Cooper said, "That's as good a place as any."

And then Green said, "Now? Right away?" Something like that.

And Cooper said, "Yes".

Q The phone-number BE 2-1879, is that a Richmond number?

A Yes.

Q And that is in the city of Richmond, County of Contra Costa, State of California?

A Yes, sir.

Q And what is Newell's?

A Newell's is a market. It's a fairly large market, and around the fringe of it there is a bar, and I think, I believe there is a shoe repair shop, I'm not sure.

Q Where is it located?

A That's on 23rd and Cutting, I believe.

Q Is that in the city of Richmond, County of Contra Costa?

A That's all in the city of Richmond.

Q After you and Mr. Green were in the phone booth, tell us what happened next, Mr. Armenta.

A Then we left the phone booth after the telephone call, and we returned to Agent Lee's vehicle. Then we were driven to the vicinity of 23rd and Cutting, where Green left the vehicle and I left after him, and we both walked on opposite sides of the street toward Cutting on 23rd.

Q And then tell us what happened next, Mr. Armenta.

A Green went into the west side of the market where [fol. 9] the parking lot is, and I stood on the corner and observed Green from that point.

Q Now, were there other agents, if you know, of the State Narcotic Bureau present in this area?

A Yes, sir. Agent Groom was also present.

Q Will you tell us where you observed Agent Groom?

A Agent Groom was on the corner of 23rd and Cutting in a vehicle, which he left about the time that we arrived near the parking area. When Green and I arrived near the parking area then Agent Groom left the vehicle and proceeded, that would be west, opposite me. It wasn't on the street, it was a vacant lot behind a fence, to a vantage point where he could observe the parking area.

Q To your knowledge did he also see you, and did you see him?

A Yes, sir.

Q Then tell us what happened next, Mr. Armenta, after you observed Mr. Green go to the parking lot in Newell's Market.

A A short time later I observed Cooper's vehicle, which I knew from before, to drive towards 22nd Street on Cutting, and make a right turn in the area of the parking lot.

Q Did you see how many persons were in that vehicle?

A Just one person.

Q Who was that, sir?

A Joe Cooper.

Q Then will you tell us what happened next, Mr. Armenta?

A At that point after he turned, made the right turn, he went out of my vision for a couple of minutes, and at that time, in that two minutes, after that two minute period had elapsed, Green walked from the parking area towards me again to the corner.

Q And then what did you see Mr. Green do after he walked toward you and the corner, sir?

A He crossed the street, proceeding north on 23rd, [fol. 10] and joined Agent Lee in the vehicle where Agent Lee was waiting.

Q Now, you stated, Mr. Armenta, that you had occasion to see and talk to Mr. Cooper after this occasion?

A Yes, sir.

Q Approximately how long later was it, sir?

A It was the next day when he was interrogated.

Q Who was present there, sir?

A Agent Groom, Agent Lopez, and several officers from the Richmond Police Department.

MR. CURTIN: That's all I have of this witness, Mr. Foreman.

THE FOREMAN: Any questions by members of the Jury?

If not, you may be excused.

HOWARD GROOM,

called as a witness before the Grand Jury of the County of Contra Costa, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CURTIN:

Q Mr. Groom, what is your full name and your address, please, for the record?

A Howard W. Groom, 22 Cowper Avenue, Berkeley.

Q And, sir, what is your business or occupation?

A I am an agent of the Bureau of Narcotic Enforcement, State of California.

Q And approximately, sir, how long have you been an agent for the State Narcotic Bureau?

A A little over three years.

Q Mr. Groom, in the course of your duties as an agent for the State Narcotic Bureau, have you become acquainted with a person by the name of Joe Cooper?

[fol. 11] A Yes, sir, I have

Q And will you please identify that person for the ladies and gentlemen of the Grand Jury? Where did that person live when you became acquainted with him?

A He lived in Richmond, 536-20th Street, South 20th Street.

Q South 20th Street? And that is in the city of Richmond?

A Yes.

Q With whom did he live there?

A A relative of his, I believe, by the name of Leona Gulley.

Q Did you have occasion, sir, in the course of your

investigation, to become acquainted with the phone number of that residence?

A I knew it at one time. I couldn't tell you the number now.

Q Now, did you know a person by the name of Frank Green?

A Yes, sir.

Q Did you have occasion to see him and be with him on the 21st of December, 1961?

A Yes, sir, I did.

Q And what was the occasion that you had to meet with him on that day, sir?

A I arrested him.

Q What was that for, sir?

A For possession of heroin.

Q And where did you have occasion to meet him on that day?

A Initially I contacted him in his hotel room, where he was placed under arrest.

Q And did you have a conversation with Mr. Green about the person, Mr. Joe Cooper?

A Yes, sir, I did.

Q Will you tell us, was there some agreement reached between you and Mr. Green in regard to Mr. Joe Cooper? [fol. 12] A Mr. Green agreed to attempt to make a purchase of heroin from Mr. Cooper, under my direction.

Q By the way, for the record, Mr. Groom,—I'll withdraw that. Strike that, please.

After this agreement was reached with Mr. Green, what did you do in regard to him, sir?

A Well, he was searched again and supplied with twenty dollars in State funds, marked State funds, and then he went with Agent Armenta, made a phone call. Ultimately met the person, Joe Cooper, purchased two bindles of heroin from him, returned, and turned the evidence over to another agent.

Q Now, Mr. Groom, where were you when Mr. Green accompanied Mr. Armenta? I assume from the Richmond Police Department. Is that correct?

A That is correct.

Q Did you have occasion to observe this?

A Yes, initially. I went down to the parking lot where they were making a phone call. I had contact by radio with Agent Yates, and Officer Stumpf, who had gone down to the vicinity of South 20th Street where Mr. Cooper lived.

They told me that the car was there, and then I gave Armenta the go-ahead to make the phone call.

Q When you say you gave Armenta the go-ahead to make the phone call, who was with him, sir?

A Mr. Green.

Q Did you see anyone else in their vicinity?

A No, sir. The two of them went into the phone booth. There wasn't room for anyone else.

Q Was there a vehicle with someone in it, near that location?

A Agent Lee drove them into the area.

Q Then after you observed the two persons in the phone booth, tell us what you observed next.

[fol. 13] A They came out, and I forget exactly how they informed us that the contact had been made, and they were going immediately to 23rd and Nevin to make the buy.

Q Sir, you said 23rd and Nevin? Where were they going?

A Correction. They were going to 23rd and Cutting.

Q Did you observe them going in this direction?

A Yes, sir. As a matter of fact, Agent Lee didn't know the best way to get there, and he followed us down. We drove.

Q In the vicinity of 23rd and Cutting, tell us what you observed.

A Well, I was with Lt. Sullivan, and they dropped Mr. Green off. We pulled up in a position where we could watch him walk down the street with Armenta following him. He went directly across the street and into the parking lot behind Jack Newell's Market.

Q You say "he", sir? For the record, who is that?

A Mr. Green.

Q And where was Agent Armenta?

A He was following. And then he stood near the curb in front of Jack Newell's Market where he could keep Mr. Green under observation.

Q Mr. Green, you say, went into the parking lot?

A Yes, sir.

Q Will you tell us then what you observed next?

A Well, I got out of the car, and on the north side of Cutting, not exactly on Cutting, there is a house with a porch, it is a two story house. I got up on this porch where I had a fairly clear view of most of the parking lot and could keep Mr. Green under observation, in case he should get out of Agent Armenta's sight.

Q And did something happen while you observed Mr. Green in the parking lot of Newell's?

[fol. 14] A He was just standing there. He stood there for some minutes, and then suddenly he started to move or walk west in the parking lot, and I could see he was going to go out of my view.

I came downstairs from this porch alongside of a building and saw him go up to a car, which I recognized to be the car of Mr. Cooper.

Q And did you see a person in that car, sir?

A There was one person in the car.

Q And then what did you see Mr. Green do up at the car?

A He stood alongside the car on the driver's side for a minute or two, and then walked away.

Q Did you follow or see or observe Mr. Green after he walked away from this car?

A Yes, sir. He walked away. He walked back on the corner of 23rd and Cutting, and started walking north on 23rd.

Q And then where did you go, sir?

A He went up to the next street parallel to Cutting. I believe it is Virginia. I followed him up the street.

He turned the corner, and entered a car with Agent Lee.

Q Now, Mr. Groom, between the time that you had searched Mr. Green at the Richmond Police Department, and the time that he has just reentered the car of Mr. Lee, did you see Mr. Green in the presence of any person other than the person in Mr. Cooper's car at the parking lot, and Agent Armenta and Agent Lee?

A He contacted no one except Mr. Cooper and the agents.

Q Now, sir, after you observed Mr. Green get back in the car with Agent Lee, what did you do next?

A Then I reentered the car with Lt. Sullivan, and we drove back to the parking lot.

At that time we saw the car driving out, and got a good look at Mr. Cooper, whom I readily recognized at that point. We followed him down the street and he stopped to talk to someone. We went down a little further [fol. 15] and we lost sight of him at that time.

Q Did you have occasion to meet or see Mr. Cooper later that day, after this occurrence?

A Yes, sir, I did.

Q And will you tell us where that was, Mr. Groom?

A That was on 7th and Macdonald in Richmond.

Q Will you tell us what occasion you had to be there?

A Well, we located his car parked there, and we waited for him to return to the car.

Q And that is Mr. Cooper?

A Mr. Cooper.

Q And this is the same car that had been in Newell's parking lot when Mr. Green had contacted him?

A That is correct.

Q Tell us what you did after you spotted this car at 7th and Macdonald.

A We just waited there, and eventually Mr. Cooper came back to the car, and when he did, he was placed under arrest.

Q Now, sir, will you tell us how he was placed under arrest?

A Well, he walked up to the car on the passenger side and put the key in the door. At that time I came up on his right side, Agent Yates came up on his left side. Agent Yates showed him a badge and said, "Joe, you're under arrest."

And then we placed him in physical restraint.

Q Tell us what you did, sir.

A Well, I had ahold of his right hand. I took him by the right wrist and Agent Yates by the left wrist, and we were about to handcuff him.

Do you want me to explain this whole thing?

Q Yes.

A Then somehow he got his left hand away from [fol. 16] Agent Yates, reached into his (indicating) right shirt pocket, put his head down and took a package out of his pocket which appeared similar to the package we had earlier gotten back from Mr. Green, and placed it in his mouth.

I attempted to prevent him from placing it in his mouth. I grabbed his hand. He put the package in his mouth, and my finger in with it.

Q Now, sir, prior to your doing that, did Mr. Cooper make any statements or any actions prior to all of this?

A Well, when we first approached him and put him under arrest, and as we seized him by the wrists he bent down and indicated—appeared to be looking into his car, and he said, "It's there, above the sun visor."

Yates asked him, "What's there?"

And he said, "The marijuana."

Agent Yates said, "What marijuana?"

He said, well, he says, "There's marijuana, but I didn't put it there. Somebody else put it there."

And that was all the conversation prior to the incident of putting this thing in his mouth.

Q It was after that that he reached into his pocket with his left hand and put this object in his mouth?

A That's right.

Q Now, what appearance did this object have that he put into his mouth?

A Well, it was a small package wrapped in brown paper.

Q Now, prior to that, had you seen any similar article that day?

A Well, as I said, the two bindles of heroin that Mr. Green purchased from him were also wrapped in brown paper, and the package looked very similar.

Q Now, tell us then what happened when you put [fol. 17] your finger in his mouth in order to retrieve this object.

A Well, I'll have to correct that. I did not put my finger in his mouth. I had no intention of getting my finger in his mouth, but he, he chewed me rather severely, and he wouldn't let go of my finger. I finally had to force it out of his mouth.

Q Did you receive medical attention, sir, for your finger?

A Yes, sir. Immediately after the arrest, I was driven to the Richmond Permanente Hospital where they treated my finger.

Q Tell us what occurred to the finger, as to its physical incapacity, sir.

A Well, it's—initially it was badly lacerated, the entire top surface. And the feeling initially, the first day the feeling was all gone out of it. And still is. The finger is still dead all on the (indicating) right side of the finger from the knuckle up to the tip. And it only bends about halfway. I can't bend it all the way.

Q When you first were able to get your finger out of Mr. Cooper's mouth, what did you observe about it? Or what did you think had happened?

A Well, I thought he had taken the first joint off. It felt like the first joint had come off. I guess that's when the nerves went dead. I looked at it to be sure it was all there.

Q And, sir, you have received medical attention in a hospital for the finger?

A About twice a week I go back and have it checked.

Q You have been doing so since the 21st of December, 1961?

A Yes, sir.

Q Now, Agent Groom, after taking Mr. Cooper into custody at that time, where did you take him, sir?

A At that time he was taken into the station. I did not see him again that day.

Q Did you have occasion to see him on the 22nd of [fol. 18] December, 1961?

A Yes, sir. I interviewed him for awhile on the 22nd.

Q At that time, sir, did you have a conversation with him about the incident of putting something in his mouth?

A Yes, sir.

Q What did he tell you?

A He said that—I asked him what he put in his mouth, and he said it was a marijuana cigarette, and I remarked that it didn't look like a marijuana cigarette.

He said it was because it was folded in half and

wrapped in brown paper, and I kept questioning the fact it was marijuana, and he kept insisting that it was.

Q Now, Mr. Groom, did you have occasion to obtain any objects from Agent Lee of the Federal Narcotic Bureau after you observed Mr. Green came back and get in the car in the vicinity of Newell's Market?

A Yes, sir, I did.

Q And what did you do with the objects you received from Mr. Lee?

A I turned it over to the Richmond criminologist, Mr. Reeves.

Q I show you this envelope, Mr. Groom, and the objects therein, and ask you to identify that for the ladies and gentlemen of the Grand Jury.

A Well, this is the envelope I made up to contain the evidence. And these are the two bindles of evidence in a piece of brown paper in which they were wrapped, which I received from Agent Lee, which he had received from Mr. Green.

Q And then I take it you placed these two bindles in the brown wrapped paper, in the brown envelope that you hold?

A No, sir, it did not happen quite that way. I gave the bindles in their initial form in the brown paper, to [fol. 19] Mr. Reeves. And then a little later I made up the envelope to contain them for evidentiary purposes.

Q Was this done in Mr. Reeves' presence, sir?

A The envelope?

Q Yes.

A Yes, sir.

Q Did Mr. Reeves place them in the envelope in your presence?

A I don't recall if he actually placed them in the envelope in my presence.

Q You gave physical custody of those to Mr. Reeves?

A I gave them to Mr. Reeves.

Q To your knowledge he is the criminologist for the Richmond Police Department?

A That is correct.

Q Where did you deliver them, sir?

A I delivered them to him in his office.

Q At the Hall of Justice?

A In the Hall of Justice in Richmond.

Q This incident regarding your finger occurred at 7th and Macdonald? Is that in the city of Richmond, County of Contra Costa, State of California?

A That is correct.

Q The brown paper that you have told us about, did you have occasion to look in Mr. Cooper's car after detaining him at 7th and Macdonald?

A Yes. It was a day or two later when I looked in the car.

Q And what did you find in regard to this paper, in the car?

A In the glove compartment I found a torn portion of a brown paper bag which is similar in appearance to that paper which contains the evidence.

MR. CURTIN: At this time, Mr. Foreman, may we [fol. 20] have the Secretary of the Grand Jury mark this as People's Exhibit A, with the date and the signature of the Secretary?

THE FOREMAN: Very well.

(A brown manila envelope, Peoples' A)

MR. CURTIN: That is all I have of this witness, Mr. Foreman.

THE FOREMAN: Any further questions?

A JUROR: It wasn't quite clear to me how his finger got into the defendant's mouth.

THE WITNESS: Well, he reached into his pocket, he had the bindle in his hand. He had his head down, he was going to put it in his mouth. I grabbed his hand to try to keep it out. He got everything in at once.

A JUROR: Did you recover that bindle? Or did he swallow it?

THE WITNESS: He swallowed it.

THE FOREMAN: Any further questions?

JOHN LEE,

called as a witness before the Grand Jury of the County of Contra Costa, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CURTIN:

Q Mr. Lee, what is your address, please? You have given your name for the record.

A 144 Federal Office Building, San Francisco.

Q What is your business or occupation, sir?

A I am a United States Treasury Agent assigned to the Bureau of Narcotics.

Q And as a Federal Narcotics Agent, sir, have you had occasion to carry on investigations in the city of Richmond, in the latter part of last year, in regard to a Joe Cooper?

A Yes, sir, I did.

Q Mr. Lee, were you familiar with a person by the name of Frank Green?

A Yes, sir, I am.

Q Did you have occasion to be with him on the 21st of December, 1961, a Thursday?

A Yes, sir, I have.

Q Where was that, sir?

A At the Richmond Police Department.

Q And will you tell us the occasion you had to be with him at that place?

A On the 21st of December of 1961 I was present at the Vice Squad detail office at the Richmond Police Department. Also present were State Agents Armenta and Howard Groom, and another Federal Agent by the name of Walter Yates. And the Richmond Police vice officers. Their names escape me now.

At that time Mr. Green agreed to assist both the Federal Agency and the State Agency in initiating a case against his source of supply, one Joseph Cooper.

Q And when this agreement was made—withdraw that.

Did you have a conversation with Mr. Green regarding Mr. Cooper?

A Yes, sir, I did.

Q And did Mr. Green agree to try to obtain narcotics from Mr. Cooper?

A Yes, sir, he did.

Q And after this agreement was reached, what was done in relationship to Mr. Green?

A Agent Howard of the State Bureau of Narcotics searched Mr. Green. Then Agent Armenta and myself took Mr. Green in a government vehicle to the vicinity [fol. 22] of Nevin Street between 10th and 11th Street in Richmond.

They went, Agent Armenta and Mr. Green then went to a public telephone booth, and I observed them making the telephone call.

Q Then what happened after they went to the phone booth, Mr. Lee? Did they return to your car then?

A Yes, sir they did.

Q Where did you go?

A Then Mr. Green informed me to drive to the vicinity of 23rd and Cutting Street in Richmond. I proceeded to do so. Then at approximately near the vicinity of 23rd and Virginia Street, Mr. Green was let out of the government vehicle, and also Mr. Armenta. Agent Armenta also got out of the vehicle. And I proceeded down toward the vicinity of 22nd and Virginia Street and parked there.

Prior to letting Mr. Green out of the government vehicle, I gave him instructions that when the transaction was over with, that he should return to 22nd and Virginia Street.

Q And then did you observe Mr. Green leave, sir?

A Yes, sir.

Q And in which direction did he go?

A He walked towards Cutting Street on 23rd, from Virginia Street.

Q And would that location be Newell's Market, in the city of Richmond?

A Yes, sir.

Q Now, after he left your automobile, could you tell us approximately how long he was gone? Did you have occasion to see him again?

A Approximately fifteen minutes later I observed Mr. Green coming around the corner onto Virginia Street from 23rd. He came directly to where I was parked, entered the vehicle, and a short distance—in a short distance [fol. 23] back of Mr. Armenta—I mean the—excuse me.

Mr. Green came around the corner onto Virginia Street from 23rd. Then in a short distance—in a—back

of Mr. Green, Agent Armenta came. And Mr. Green entered the vehicle, at which time he handed me the two paper bindles.

Q And sir, are you familiar with the containers for narcotics?

A Yes, sir.

Q Will you tell us what you received from Mr. Green, that you observed?

A I received two paper bindles. I believe at that time it was wrapped in a brown paper, which apparently was torn from a brown paper package that you receive when you go to a grocery store.

Q And did you examine the contents of the bindle, sir?

A Not at that time, no, sir.

Q Did you do so at a later time?

A Yes, sir.

Q What did it appear to you to be?

A It appeared to be a brown powdery substance.

Q And Mr. Lee, what did you do with the two bindles that you received from Mr. Green?

A I placed my initials, J. Y. L. on both the bindles, and also on the brown wrapping paper, and at that time I turned the two paper bindles and also the brown paper over to State Agent Howard Groom.

Q And where did you turn it over to Mr. Groom, sir?

A In the vice office detail at the Richmond Police Department.

MR. CURTIN: For the record, may it show that I have torn the seal of the Grand Jury Secretary.

[fol. 24] BY MR. CURTIN:

Q Would you examine these, sir, and tell us if you can identify the bindles as the bindles you turned over to Mr. Groom?

A (Examining) Yes, sir. This is the—two paper bindles that I received from Mr. Green. My initials, J. Y. L., and the date 12-21-61. And also the brown paper wrapper, J. Y. L., 12-21-61.

Q Thank you, sir.

MR. CURTIN: That is all I have of this witness, Mr. Foreman.

THE FOREMAN: Any members of the Jury have, any questions?

If not, you may be excused. Thank you, sir.

MR. CURTIN: Call Mr. Hillard Reeves.

HILLARD REEVES,

called as a witness before the Grand Jury of the County of Contra Costa, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CURTIN:

Q Mr. Reeves, your full name and your address, please, for the record?

A Hillard M. Reeves, 2433 Downer Avenue, Richmond.

Q What is your business or occupation, sir?

A Criminalist for the Richmond Police Department.

Q Will you state for the record your training, experience, and background as a criminalist for the Richmond Police Department?

A I graduated from the University of California in 1949 with a degree of criminology. I have been working as criminalist for about ten years now.

Q And does your experience and training include the [fol. 25] analyzation of narcotic substances such as heroin and marijuana?

A Yes, it does.

Q And have you had chemical training in that regard, sir?

A Yes, I have.

Q And have you testified in Superior Court as an expert on those subjects?

A Yes, I have.

Q I will show you an envelope marked Peoples' A, and ask you, sir, if you can identify that envelope and its contents?

A (Examining) Yes, sir, I can.

Q Will you tell us how you can identify those objects, sir, contained in that envelope marked Peoples' A?

A The small piece of brown paper has my name on it and the date that I received it.

And the two papers, folded papers have my initial, and I have them numbered.

Q From whom did you receive those objects, sir, the brown paper, the two objects which are contained in the manila envelope?

A I received those from Agent Groom of the Bureau of Narcotic Enforcement.

Q Where did he hand those to you?

A In the crime lab of the Richmond Police Department.

Q Did you have occasion to analyze the matter contained, if any, in the bindles of paper that he handed to you on that day?

A Yes, I have.

Q And what did you analyze the matter to be, sir?

A I found white powder in both of the folded papers, and this white powder contained heroin.

Q And have those objects been in your possession since that time they were handed to you by Agent Groom?

A Yes, sir, they have.

Q Did you bring them here to this courtroom before [fol. 26] the Grand Jury today, sir?

A Yes, I did.

MR. CURTIN: At this time, Mr. Foreman, may we ask that Peoples' A and the contents be returned to this witness to keep in his possession?

THE FOREMAN: Yes.

MR. CURTIN: That's all I have of this witness, Mr. Foreman.

THE FOREMAN: Any questions from the Jury?

MR. CURTIN: At this time, Mr. Foreman, may the record show that we are retiring from the room, together with the Court Reporter, and submitting the matter to the Grand Jury for decision.

[fol. 27]

[CERTIFICATE OF CERTIFIED SHORTHAND REPORTER
(Omitted in Printing)]

[fol. 28]

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
CONTRA COSTA

No. 7744

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

JOE COOPER, DEFENDANT

MOTION TO SET ASIDE INDICTMENT—February 9, 1962

COMES NOW WAYNE A. WESTOVER, JR., and moves to set aside the Indictment returned by the Grand Jury of this County on the 15th day of January, 1962, on the grounds that the defendant has been indicted without reasonable or probable cause; more particularly, the testimony presented to the Grand Jury was largely hearsay evidence and other portions of the testimony was otherwise incompetent evidence.

This Motion will be based on the pleadings and documents in the file and on oral testimony to be presented at the time of hearing.

Dated this 9th day of February, 1962.

CALFEE & WESTOVER

By WAYNE A. WESTOVER, JR.
Attorneys for Defendant.

POINTS & AUTHORITIES:

People vs. Soto, 144 CA2d, 295

"When the only evidence produced against the defendant is incompetent and inadmissible, then there exists no reasonable or probable cause to hold him to answer."

[fol. 29]

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
CONTRA COSTA**

[File Endorsement Omitted]

INDICTMENT—filed January 15, 1962

CLERK'S RECORD

**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE COUNTY OF
CONTRA COSTA, the 15th day of January, 1962.**

The defendant, JOE COOPER, is accused by the Grand Jury of the County of Contra Costa, State of California, by this indictment of the crimes of felonies, (Two Counts) to wit: VIOLATION OF SECTION 11501 HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA (Sale of Heroin), and VIOLATION OF SECTION 245 PENAL CODE OF THE STATE OF CALIFORNIA (Assault with force likely to produce Great Bodily Injury).

In that on or about the 21st day of December, 1961, A.D., at Richmond, in the County of Contra Costa, State of California, the defendant, JOE COOPER, did wilfully, unlawfully, feloniously sell, furnish and give away a preparation of Heroin, in violation of Section 11501 Health and Safety Code of the State of California.

COUNT TWO: For a further and separate cause of action, being a different offense from but connected in its [fol. 30] commission with the charge set forth in Count One hereof, the said JOE COOPER, is accused by the Grand Jury of and for the County of Contra Costa State of California, by this indictment of the crime of violation of Section 245 Penal Code of the State of California, a felony, committed as follows: That the said JOE COOPER, on or about the 21st day of December, 1961, at and in the County of Contra Costa, State of California, did wilfully, unlawfully and feloniously assault HOWARD

GROOM, a human being, by means of force likely to produce great bodily injury.

Dated this 15th day of January, 1962.

JOHN A. NEJEDLY,
District Attorney in and for the
County of Contra Costa, State of
California.

/s/ By THOMAS F. CURTIN
Deputy District Attorney

Witnesses sworn and examined
before the Grand Jury:

Steven L. Armenta
Howard Groom
John Lee
Hillard Reeves

[fol. 31]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

[File Endorsement Omitted]

[Title Omitted]

MINUTE ENTRY OF ARRAIGNMENT—January 29, 1962

The defendant, with his counsel Wayne Westover, and the District Attorney by M. B. Veale, Deputy, appear in open Court at this time, this being the time fixed by the Court for the Arraignment of the defendant on the Indictment heretofore filed herein.

Thereupon the Court informs the defendant of the charges brought against him, of his right to a hearing, of his right to be represented by counsel at all times herein.

Thereupon the defendant is arraigned in the following manner, to-wit: a true copy of the Indictment is handed the defendant by the Clerk. The defendant waives the reading of the Indictment and states that he is charged therein by his true name.

Upon motion of the defendant, it is by the Court ordered that the time for the defendant to enter a plea herein be continued to Monday, February 5, 1962 at 9:30 o'clock a.m.

[fol. 32] Defendant is remanded to the custody of the Sheriff.

[fol. 33]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY.

[File Endorsement Omitted]

[Title Omitted]

MINUTE ORDER—HEARING ON MOTION TO DISMISS—
February 5, 1962

The defendant with his counsel Wayne Westover and the District Attorney by M. B. Veale, deputy, appear in open Court at this time and the Court fixes this as the time for hearing the motion of the defendant.

Thereupon the defendant moves the Court to dismiss the Indictment herein against the defendant on grounds as set forth in Section 995, California Penal Code and specifically on the grounds that there is not reasonable or probable cause to charge the defendant with the offense herein.

Thereupon it is by the Court ordered that the hearing on said motion be set for Tuesday, February 13, 1962 at 9:30 o'clock a.m.

Defendant is remanded to the custody of the Sheriff.

[fol. 34]

MINUTE ORDER—HEARING ON MOTION TO DISMISS—
February 13, 1962

The defendant with his counsel Wayne Westover and the District Attorney by Thomas Curtin, Deputy, appear in open Court at this time, this being the time fixed by the Court for the hearing of defendant's motion to dismiss the indictment herein.

Upon stipulation of counsel, it is by the Court ordered that the hearing on this motion be continued to Monday, February 19, 1962 at 9:30 o'clock a.m.

The defendant is remanded to the custody of the Sheriff.

[fol. 35]

MINUTE ORDER—HEARING ON MOTION TO DISMISS
SUBMITTED—February 19, 1962

The defendant with his counsel Wayne Westover and the District Attorney by Thomas Curtin, deputy, appear in open Court at this time, this being the time fixed by the Court for the hearing on the Motion to Dismiss the information herein.

Said motion is argued to the Court by respective counsel and submitted for consideration and decision and it is by the Court ordered that said motion stand submitted.

[fol. 36]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

MINUTE ORDER OF DENIAL OF MOTION TO DISMISS AND
PLEA—February 26, 1962

The defendant with his counsel Thomas Sheahan and the District Attorney by Thomas Curtin, deputy, appear

in open Court at this time, this being the time fixed by the Court for hearing the motion of the defendant to dismiss the indictment herein.

Thereupon counsel for the respective parties argue the motion to dismiss and the matter is submitted to the Court for consideration and decision and the Court having fully considered the same and being duly advised in the premises, orders that said motion be denied.

Thereupon the defendant enters a plea of Not Guilty of the offense as charged in Count One of the Indictment and enters a plea of Not Guilty of the offense as charged in Count Two of the Indictment.

Upon motion of the District Attorney and the defendant consenting thereto, it is by the Court ordered that the trial of this cause be set for April 10, 1962 at 10 o'clock a.m.

[fol. 37]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

[File Endorsement Omitted]

ORDER GRANTING MOTION TO WITHDRAW AS ATTORNEY—
March 5, 1962

The motion of WAYNE A. WESTOVER, JR., of CALFEE & WESTOVER, for the order hereinafter made came on regularly to be heard this day, and the defendant Joe Cooper having appeared,

Upon proof being made to the satisfaction of the Court, and good cause appearing therefor,

IT IS ORDERED that CALFEE & WESTOVER are hereby permitted to withdraw as attorneys for JOE COOPER, defendant herein.

Dated this 5th day of March, 1962.

/s/ HUGH H. DONOVAN
Judge of the Superior Court.

[fol. 38]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

* * *

MINUTE ORDER APPOINTING COUNSEL—March 12, 1962

The defendant with his counsel Robert H. Moran and the District Attorney by M. B. Veale, deputy, appear in open Court at this time, this being the time fixed by the Court for the defendant to name an attorney to represent him herein.

Thereupon the defendant informs the Court that Robert H. Moran will represent the defendant in these proceedings.

The defendant is remanded to the custody of the Sheriff.

[fol. 39]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

[File Endorsement Omitted]

* * *

AMENDED INDICTMENT—Filed April 12, 1962

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF CONTRA COSTA, the 23rd day of March, 1962.

The defendant, JOE COOPER, is accused by the Grand Jury of the County of Contra Costa, State of California, by this indictment of the crimes of felonies, (Two Counts) to wit: VIOLATION OF SECTION 11501 HEALTH AND SAFETY CODE OF THE STATE OF CALIFORNIA (Sale of Heroin), and VIOLATION OF SECTION 245 PNEAL CODE OF THE STATE OF CALIFORNIA (Assault With Force Likely to Produce Great Bodily Injury).

In that on or about the 21st day of December, 1961, A. D., at Richmond, in the County of Contra Costa, State of California, the defendant, JOE COOPER, did wilfully, unlawfully, feloniously sell, furnish and give away a preparation of Heroin, in violation of Section 11501 Health and Safety Code of the State of California.

COUNT TWO: For a further and separate cause of [fol. 40] action, being a different offense from but connected in its commission with the charge set forth in Count One hereof, the said JOE COOPER, is accused by the Grand Jury of and for the County of Contra Costa, State of California, by this indictment of the crime of violation of Section 245 Penal Code of the State of California, a felony, committed as follows: That the said JOE COOPER, on or about the 21st day of December, 1961, at and in the County of Contra Costa, State of California, did wilfully, unlawfully and feloniously assault HOWARD GROOM a human being, by means of force likely to produce great bodily injury.

PRIOR CONVICTION: That before the commission of the offense hereinbefore set forth in this indictment, said defendant JOE COOPER, was in the Superior Court of the State of California, in and for the County of Los Angeles, convicted of the crime of Violation of Section 11500 Health and Safety Code of the State of California (Sale of Narcotics), a felony, and the judgment of said court against said defendant in said connection was, on or about the 26th day of December, 1957 pronounced and rendered, and said defendant served a term of imprisonment therefor in the State Prison.

PRIOR CONVICTION: That before the commission of the offense hereinbefore set forth in this indictment, said defendant, JOE COOPER, was in the Superior Court of the State of California, in and for the County of Los Angeles, convicted of the crime of Violation of Section 501 of the Vehicle Code of the State of California [fol. 41] (Felony Drunk Driving), a felony, and the judgment of said court against said defendant in said connection was, on or about the 26th day of December, 1957 pronounced and rendered, and said defendant served a term of imprisonment therefor in the State Prison.

Dated this 23rd day of March, 1962.

JOHN A. NEJEDLY,
District Attorney in and for the
County of Contra Costa, State of
California

/s/ By THOMAS F. CURTIN
Deputy District Attorney

Witnesses sworn and examined
before the Grand Jury:

Steven L. Armenta
Howard Groom
John Lee
Hillard Reeves

[fol. 42]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

* * * * *
MINUTE ORDERS OF TRIAL—April 10, 11, 12, 1962

The defendant with his counsel, Robert H. Moran and the District Attorney, by Thomas F. Curtin, Deputy District Attorney, appear in open Court at this time, this being the time fixed by the Court for the trial of the above cause. At this time the defendant waives trial by jury and the District Attorney consenting thereto, the trial of the said cause proceeds before the Court sitting without a jury.

Upon motion of the defendant, it is by the Court ordered that all witnesses be excluded from the Court room until called, except that Sergeant Groom may remain on behalf of the People.

The people call Steven Lawrence Armenta, Howard W. Groom and Thomas Flint, Jr. who are sworn and testify herein and the People introduce in evidence the following exhibits, to-wit:

- No. 1: Photograph showing phone booth
- [fol. 43] No. 2: Photograph showing Newell's Market
- No. 3: Photograph showing 23rd St. facing Cutting
- No. 4: Brown manila envelope containing two bindles of white powder and piece of brown paper for identification
- No. 5: Photograph showing northwest corner of 7th and Macdonald Streets
- No. 6A and 6B: Photographs showing finger of Sergeant Groom
- No. 7: Marijuana seed and brown manila envelope for identification

and the defendant introduces in evidence the following exhibits, to-wit:

- No. 1: Photograph looking West across 23rd Street
- No. 2: Photograph looking South across Cutting Blvd.

Thereupon the further trial of the within cause is continued to Wednesday, April 11, 1962 at 10 o'clock A.M.; and all witnesses heretofore subpoenaed for this trial are by the Court ordered to return at that time.

The defendant is remanded to the custody of the Sheriff.

[fol. 44]

April 11, 1962

The defendant with his counsel and the District Attorney by Thomas F. Curtin being present in open Court at this time, the further trial of the above cause is resumed.

The People call Howard W. Groom, Norman Wesley Sullivan, Leona Gulley, John Lee, Hillard M. Reaves,

Louis Stumpf, Walter T. Yates and Orville L. Billingsley who are sworn and testify herein and the People introduce into evidence the following exhibits, to-wit:

- No. 4: Heretofore introduced for identification
- No. 7: Heretofore introduced for identification
- No. 8: Photograph showing East side of S. 20th St., and Cutting
- No. 9: Photograph showing South 20th & Cutting looking toward Newell's Market
- No. 10: Tape and Box dated December 22, 1961 of Joe Cooper

[fol. 45] The People rest.

Thereupon the defendant moves the Court for dismissal of the within cause upon the grounds as taken down by the Official Court Reporter and said matter is argued to the Court by counsel and is submitted to the Court for consideration and decision and said motion is by the Court denied.

Thereupon it is by the Court ordered that the further trial of the within cause be and the same is hereby continued to Thursday, April 12, 1962 at 10:00 a.m.

[fol. 46]

April 12, 1962

The defendant with his counsel and the District Attorney by Thomas F. Curtin being present in open Court at this time, the further trial of the within cause is resumed.

The defendant calls Joe Cooper who is sworn and testifies herein.

The defendant rests.

The People introduce in evidence the following exhibit, to-wit;

- No. 11: Picture of Joe Cooper

The People move the Court for permission to file an amended indictment which includes two prior felony convictions and upon order of the Court said amended indictment is filed.

5
An amended indictment having been filed herein, the Court fixes this as the time for arraignment of the defendant upon said amended indictment; and with consent of the defendant said defendant is arraigned upon the amended indictment in the following manner, to-wit: [fol. 47] a true copy of the amended indictment is delivered to the defendant by the Clerk. The defendant waives the reading of the amended indictment and states that he is charged in the indictment by his true name. The defendant pleads that he is not guilty of the offense charged in Count One of the amended indictment, to-wit: violation of Section 11501 Health and Safety Code of the State of California (Sale of Heroin); and the defendant pleads that he is not guilty of the offense charged in Count Two of the amended indictment, to-wit: violation of Section 245 Penal Code of the State of California (Assault with force likely to produce great bodily injury).

Thereupon the defendant admits to the conviction in the Superior Court of the State of California, in and for the County of Los Angeles for the crime of Violation of Section 11500 Health and Safety Code of the State of California (Sale of Narcotics, a felony, and the judgment of said court against said defendant on or about the 26th day of December, 1957 and of having served a term of imprisonment therefor in the State Prison; and the defendant further admits to the conviction in the Superior Court of the State of California, in and for the County of Los Angeles of the crime of Violation of Section 501 of the Vehicle Code of the State of California (Felony Drunk Driving), a felony, and the judgment of said Court against the defendant on or about the 26th day of December, 1957 and of having served a term of imprisonment therefor in the State Prison.

[fol. 48] The People rest; the Defendant rests.

Thereupon the matter is submitted to the Court for consideration and decision and the Court having fully considered the same and being duly advised in the premises finds that the defendant Joe Cooper is guilty of violation of Section 11501 Health and Safety Code of the State of California (Sale of Heroin) as charged in Count

One of the amended indictment; and the Court further finds that the defendant Joe Cooper is guilty of the lesser and included offense of simple assault as charged in Count Two of the amended indictment.

It is ordered that the matter of probation for the defendant be referred to the Probation Officer for investigation and a report. The defendant waives the statutory time for hearing the report of the Probation Officer. It is further ordered that the time for hearing the report of the Probation Officer and the time for pronouncing judgment and sentence against the defendant be continued to and set for Monday, May 7, 1962 at 1:30 o'clock p.m.

The defendant is remanded to the custody of the Sheriff.

[fol. 49]

IN THE SUPERIOR COURT OF CONTRA COSTA COUNTY

* * * *

MINUTE ORDER—PROBATION REPORT AND SENTENCE— May 7, 1962

The defendant with his counsel Robert H. Moran, and the District Attorney by Donald R. Walker, Deputy District Attorney, appear in open Court at this time, this being the time fixed by the Court for hearing the report of the Probation Officer in the matter of probation for the defendant and the time for pronouncing judgment and sentence against the defendant.

The Court having read and fully considered the report of the Probation Officer and being duly advised in the premises orders that the defendant be and he is hereby denied probation.

The defendant then states to the Court that he was no legal cause to show why judgment should not be pronounced against him, and no sufficient cause appears or is shown to the Court.

The Court thereupon proceeds to and does pronounce judgment and sentence against the defendant; and it is by the Court ordered that the defendant Joe Nathan

Cooper is Guilty of the crime of Violation of Section 11501 of the California Health and Safety Code (sale [fol. 50] of Heroin), on Count One of the Amended Indictment, and that he be punished by imprisonment in the State Prison of California, and that the Sheriff of Contra Costa County deliver the defendant into the custody of the Director of Corrections at the California Medical Facility, at Vacaville, California.

It is further ordered that the defendant Joe Nathan Cooper is Guilty of the crime of Violation of Section 240, Penal Code of the State of California (Assault), on Count Two of the Amended Indictment, and that he be punished by imprisonment in the Contra Costa Jail for a period of six (6) months.

It is further ordered that the defendant Joe Nathan Cooper suffered the prior conviction for the crime of Sale of Narcotics, a felony, in the Superior Court of the State California, in and for the County of Los Angeles, and of pronouncement of judgment thereon on or about the 26th day of December, 1957; and the prior conviction for the crime of Felony Drunk Driving, a felony in the Superior Court of the State of California, in and for the County of Los Angeles, and of the pronouncement of judgment thereon on or about the 26th day of December, 1957.

It is further ordered that the sentences imposed on Counts One and Two of the Amended Indictment run CONCURRENTLY.

It is further ordered that the sentences imposed on Counts One and Two of the Amended Indictment run [fol. 51] CONCURRENTLY with the term the defendant is currently serving.

The defendant thereupon gives oral notice of appeal from the judgment of the Court. Counsel for defendant moves the Court for an order of withdrawal as counsel in the within cause and said motion is by the Court granted upon the filing of Notice of Appeal.

The defendant is remanded to the custody of the Sheriff of the County of Contra Costa to be by said Sheriff delivered into the custody of the Director of Corrections at the California Medical Facility, at Vacaville, California.

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY STATE OF CALIFORNIA

No. 7744

May 7, 1962

Present, Hon. NORMAN A. GREGG, Judge

THE PEOPLE OF THE STATE OF CALIFORNIA

vs.

JOE NATHAN COOPER

Convicted of Violation of Section 11501, Health and Safety Code; and Violation of Section 240 of the Penal Code

The District Attorney, with the defendant and his counsel, Robert H. Moran came into Court. The defendant was duly informed by the Court of the indictment found against him on the 15th day of January, 1961 for the crime of: Violation of section 11501 of the California Health and Safety Code (sale of Heroin); and Violation of Section 245 of the California Penal Code (assault with force likely to produce great bodily injury; of the amended indictment found against him on the 12th day [fol. 52] of April, 1962 for the crime of: Violation of section 11501 of the California Health and Safety Code (sale of Heroin); and Violation of Section 245 of the California Penal Code (assault with force likely to produce great bodily injury; of a prior conviction for the crime of Sale of Narcotics, a felony, in the Superior Court of the State of California, in and for the County of Los Angeles, and of pronouncement of judgment thereon on or about the 26th day of December, 1957; and of a prior conviction for the crime of Felony Drunk Driving, a felony, in the Superior Court of the State of California, in and for the County of Los Angeles, and of the pronouncement of judgment thereon on or about the 26th day of December, 1957; of his arraignment on the amended indictment and of his pleas of "NOT GUILTY

of the Offenses Charged"; on the 12th day of April, 1962, to-wit: NOT GUILTY of the crime of Violation of Section 11501, California Health and Safety Code (Sale of Heroin) on Count One of the Amended Indictment; and NOT GUILTY of the crime of Violation of Section 245 of the California Penal Code (Assault with force likely to Produce Great Bodily Injury); of his admitting the prior conviction of Sale of Narcotics, a felony and of his admitting the prior conviction of felony drunk driving, a felony, as hereinabove set forth; of his trial before the Court sitting without a jury, and the verdicts of the Court on the 12th day of April, 1962, to-wit: Guilty of Violation of Section 11501, Health and Safety Code of the State of California (Sale of Heroin) as charged in Count One of the amended indictment; and [fol. 53] Guilty of Violation of Section 240 of the Penal Code of the State of California (Assault) the lesser and included offense as charged in Count Two of the Amended indictment; of the matter of probation for the defendant being referred to the Probation Officer for investigation and a report; of the denial by the Court of probation for the defendant on the 7th day of May, 1962.

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him to which he replied that he had none. And no sufficient cause being shown or appearing to the Court, thereupon the Court renders its judgment:

That whereas the said Joe Nathan Cooper having been duly convicted in this Court of the crime of Violation of Section 11501, Health and Safety Code of the State of California (Sale of Heroin) on the Count One of the Amended Indictment; and having been duly convicted in this Court of the crime of Violation of Section 240, Penal Code of the State of California (Assault) on Count Two of the Amended Information; and having suffered the prior convictions and pronouncements of judgment for Sale of Narcotics, a felony and Felony Drunk Driving, a felony, as hereinabove set forth,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the said Joe Nathan Cooper is guilty of the crime of Violation of Section 11501 Health and

Safety Code of the State of California (Sale of Heroin) on Count One of the Amended Indictment, and that he [fol. 54] be punished by imprisonment in the State Prison of California; and IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said Joe Nathan Cooper is guilty of the crime of Violation of Section 240 Penal Code of the State of California (Assault) on Count Two of the Amended Indictment and that he be punished by imprisonment in the Contra Costa County jail for a period of six (6) months.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sentence imposed on Counts One and Two of the Amended Indictment run CONCURRENTLY; and that both sentences run CONCURRENTLY with the term defendant is currently serving.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sheriff of Contra Costa County deliver the defendant into the custody of the Director of Corrections at the California Medical Facility, at Vacaville, California.

The defendant was then remanded to the custody of the Sheriff of Contra Costa County to be by him delivered into the custody of the Director of Corrections at the California Medical Facility at Vacaville, California.

[fol. 55]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY STATE OF CALIFORNIA

[File Endorsement Omitted]

[Title Omitted]

COMMITMENT—May 7, 1962

The District Attorney, with the defendant and his counsel, Robert H. Moran came into Court. The defendant was duly informed by the Court of the indictment found against him on the 15th day of January, 1961 for

the crime of: Violation of section 11501 of the California Health and Safety Code (sale of Heroin); and Violation of Section 245 of the California Penal Code (assault with force likely to produce great bodily injury; of the amended indictment found against him on the 12th day of April, 1962 for the crime of: Violation of Section 11501 of the California Health and Safety Code (sale [fol. 56] of Heroin); and Violation of Section 245 of the California Penal Code (assault with force likely to produce great bodily injury; of a prior conviction for the crime of Sale of Narcotics, a felony, in the Superior Court of the State of California, in and for the County of Los Angeles, and of pronouncement of judgment thereon on or about the 26th day of December, 1957; and of a prior conviction for the crime of Felony Drunk Driving, a felony, in the Superior Court of the State of California, in and for the County of Los Angeles, and of the pronouncement of judgment thereon on or about the 26th day of December, 1957; of his arraignment on the amended indictment and of his pleas of "NOT GUILTY of the Offenses Charged"; on the 12th day of April, 1962, to-wit: NOT GUILTY of the crime of Violation of Section 11501, California Health and Safety Code (Sale of Heroin) on Count One of the Amended Indictment; and NOT GUILTY of the crime of Violation of Section 245 of the California Penal Code (Assault with force likely to Produce Great Bodily Injury); of his admitting the prior conviction of Sale of Narcotics, a felony and of his admitting the prior conviction of felony drunk driving, a felony, as hereinabove set forth; of his trial before the Court sitting without a jury, and the verdicts of the Court on the 12th day of April, 1962, to-wit: Guilty of Violation of Section 11501 Health and Safety Code of the State of California (Sale of Heroin) as charged in Count One of the amended indictment; and Guilty of Violation of Section 240 of the Penal Code of the State of [fol. 57] California (Assault) the lesser and included offense as charged in Count Two of the amended indictment; of the matter of probation for the defendant being referred to the Probation Officer for investigation and a report; of the denial by the Court of probation for the defendant on the 7th day of May, 1962.

The defendant was then asked if he had any legal cause to show why judgment should not be pronounced against him to which he replied that he had none. And no sufficient cause being shown or appearing to the Court, thereupon the Court renders its judgments:

That whereas the said Joe Nathan Cooper having been duly convicted in this Court of the crime of Violation of Section 11501, Health and Safety Code of the State of California (Sale of Heroin) on Count One of the Amended Indictment; and having been duly convicted in this Court of the crime of Violation of Section 240, Penal Code of the State of California (Assault) on Count Two of the Amended Information; and having suffered the prior convictions and pronouncements of judgment for Sale of Narcotics, a felony and Felony Drunk Driving, a felony, as hereinabove set forth.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the said Joe Nathan Cooper is guilty of the crime of Violation of Section 11501 Health and Safety Code of the State of California (Sale of Heroin) on Count One of the Amended Indictment, and that he be punished by imprisonment in the State Prison of California; and IT IS FURTHER ORDERED, AD-
[fol. 58] JUDGED AND DECREED that the said Joe Nathan Cooper is guilty of the crime of Violation of Section 240 Penal Code of the State of California (Assault) on Count Two of the Amended Indictment and that he be punished by imprisonment in the Contra Costa County jail for a period of six (6) months.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sentence imposed on Counts One and Two of the Amended Indictment run CONCURRENTLY; and that both sentences run CONCURRENTLY with the term defendant is currently serving.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Sheriff of Contra Costa County deliver the defendant into the custody of the Director of Corrections at the California Medical Facility, at Vacaville, California.

The defendant was then remanded to the custody of the Sheriff of Contra Costa County to be by him delivered into the custody of the Director of Corrections at the California Medical Facility at Vacaville, California.

OFFICE OF THE COUNTY CLERK)
COUNTY OF CONTRA COSTA)

I, NORMAN A. GREGG, Judge of the Superior Court, and I, W. T. PAASCH, County Clerk of the County of Contra Costa, and Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full, true and correct copy of the judgment entered on the minutes of the said Superior Court of the County of Contra Costa, State of California, on the 7th day of May, 1962, in the above entitled cause.

[fol. 59]

/s/ NORMAN A. GREGG

Judge of the Superior Court of
the State of California, in and
for the County of Contra Costa

* * * *

[fol. 60]

IN THE SUPERIOR COURT OF CONTRA COSTA
COUNTY

[File Endorsement Omitted]

* * * *

NOTICE OF APPEAL—Filed May 7, 1962

I, JOE NATHAN COOPER, Defendant herein, hereby give notice that I am appealing the judgment entered in the above-captioned matter on May 7th, 1962.

/s/ JOE N. COOPER

[fol. A]

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
CONTRA COSTA

No.

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF AND RESPONDENT

-vs-

JOE COOPER, DEFENDANT AND APPELLANT

REPORTER'S TRANSCRIPT

HON. NORMAN A. GREGG, JUDGE.

APPEARANCES:

STANLEY MOSK, Attorney General of the State of
California;

JOHN A. NEJEDLY, District Attorney, Contra Costa
County,
Hall of Records, Martinez, California,

By: THOMAS CURTIN, Deputy District Attorney,
Attorney for the People and Respondent;

ROBERT H. MORAN, Attorney at Law,
Financial Center Building,
Oakland, California,
Attorney for the Defendant and Appellant.

[fol. 4]

April 10, 1962, 1:30 o'clock p.m.

PROCEEDINGS

COLLOQUY BETWEEN COURT AND COUNSEL

THE COURT: People versus Joe Cooper.

MR. CURTIN: That's ready on behalf of the People,
Your Honor.

MR. MORAN: Ready for the defense, Your Honor.

THE COURT: Mr. Curtin, I wasn't, of course, familiar with what happened at the arraignment in this matter, but I was wondering about a waiver of a jury. Do you know what the record shows?

MR. CURTIN: I don't know if that's been formally entered, Your Honor.

MR. MORAN: It hasn't been done, but we're prepared to do so at this time.

THE COURT: All right.

Mr. Cooper this matter has been set for trial at this time without the presence of a jury. I assume you have discussed this with your attorney. Do you waive a jury?

DEFENDANT COOPER: Yes, Your Honor.

THE COURT: Do you join in the waiver, Mr. Moran?

MR. MORAN: I do.

THE COURT: The District Attorney?

MR. CURTIN: Yes, Your Honor.

THE COURT: You may sit down.

Let the record show, then, that a trial by jury is waived in this matter.

[fol. 5] I have read the information of the indictment. I have not read the transcript.

Do you wish to make any statement? If not, you may call your first witness.

MR. CURTIN: We wish to call our first witness and proceed.

MR. MORAN: If the Court please, before this is done may we have an order excluding witnesses.

THE COURT: Yes. Who will be your first witness?

MR. CURTIN: We'll call Mr. Armenta as our first witness. Within the discretion of the Court, I was going to ask if we might have one officer, Howard Groom, present. He will be the second witness.

THE COURT: All right.

All other witnesses in the matter now on trial will remove themselves from the courtroom, but remain near the doorway so we may call you.

Mr. Curtin, there are two ladies in the courtroom. Are either of them witnesses of yours?

Are either of you witnesses in this case?

MR. CURTIN: They have been subpoenaed, I believe, Your Honor, and they should stay outside the courtroom.

THE COURT: All right. Would you remain outside the doorway of the courtroom, please, until you are called in.

I think also, Mr. Moran, there is an order relieving Mr. Westover as attorney of record. And I think the [fol. 6] record should show that you are the attorney of record.

MR. MORAN: Perhaps it hasn't. I had appeared before Judge Donovan a couple of weeks ago, and—

THE COURT: Your appearance has been entered.

MR. MORAN: It has been entered.

THE COURT: Fine.

STEVEN LAURANCE ARMENTA,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE COURT: Just have a seat, Mr. Armenta. That's A-r-m-e-n-t-a?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR CURTIN: Q. Mr. Armenta, what is your address, please, for the record?

A. 4127 Irving Street, San Francisco.

Q. Mr. Armenta, what is your occupation?

A. I'm an agent for the Bureau of Narcotic Enforcement, Department of Justice, State of California.

Q. And Mr. Armenta, were you so employed on the 21st day of December, 1961?

A. Yes, sir, I was.

Q. I'm going to ask you, sir, if on that day you have occasion to remember the events of that day.

A. Yes, sir, I do.

Q. Will you tell us, if you had occasion to meet a [fol. 7] Frank Green on that day?

A. Yes, I did.

Q. Will you describe that person for his Honor, the Court?

A He's a Negro male adult, approximately 35 years old, five feet, eleven inches, about 165 pounds.

Q And Mr. Armenta, will you tell his Honor, the Court, did you have occasion to see Mr. Frank Green on the 21st of December, 1961?

A Yes, I did.

Q And what was your occasion for seeing him?

A We placed him under arrest in his hotel room.

Q And where was that, sir?

A That's on Second and Macdonald Streets in Richmond.

Q And will you tell us the occasion that you had to place him under arrest? Did you have a warrant, or not?

A At the time I don't recall if we had a warrant or not.

Q Mr. Frank Green was, in any event, placed under arrest in your presence, was he, sir?

A Yes, sir, he was.

Q Who was with you at that time?

A Agent Groom and Richmond police officer Stumpf.

Q And will you tell us what you observed physically about Mr. Green at that time, if anything, that was unusual? How was he dressed, sir?

A I recall he had a pair of dark colored trousers on. This was after we left the room.

[fol. 8] Q The first time you met him, sir.

A At the first time I met him I believe all he had on was a pair of what you call skivvy drawers.

Q And then did you have occasion to see him dressed, sir?

A Yes, sir, I did.

Q Was anything done in regards to his dress?

A Yes, sir. A close check was made of all the clothing that Mr. Green put on, and also all the clothing in the room.

Q And who did that, sir?

A Officer Groom—Agent Groom, Officer Stumpf, and myself.

Q And for the record, who is Agent Groom?

A He's an agent for the Bureau of Narcotic Enforcement.

Q And after you observed this with Mr. Frank Green, tell us what occurred next.

A We took Mr. Green to the Richmond Police Department.

Q And will you tell us what was done at the Richmond Police Department with Mr. Frank Green?

A He was interrogated.

Q Now, did you see something further occur at the Richmond Police Department regarding the search of the person of Mr. Green?

A Yes, sir. He was searched again at the police department.

Q And approximately what time of the day was this on the 21st of December, 1961?

A That he was searched the second time?

Q Yes.

[fol. 9] A That was about 12:30, or just shortly before.

Q Would this be around the noon hour, sir?

A Just at the noon hour.

Q And this was at the Hall of Justice in the City of Richmond, was it, sir?

A This is in the police department.

Q Police department in the City of Richmond.

A Yes, sir.

Q County of Contra Costa. Would you— Without relating any conversations, did you hear a conversation with Mr. Green regarding a Mr. Joe Cooper?

A Yes, sir, I did.

Q And was there a conversation with Mr. Green regarding Mr. Joe Cooper and narcotics?

A Yes, sir, there was.

Q Now, after Mr. Green was searched the second time, tell his Honor what happened.

A He was furnished with \$20.00, State funds, by Agent Groom, and he was transported to the downtown area in Richmond.

Q And will you tell us the occasion that you had to go do the downtown area in Richmond, sir.

A We went to the downtown area to a point between Eleventh and Twelfth Streets on Nevin, and made a phone call from a phone booth in a parking lot.

Q And how did you get to the downtown area, sir, that day?

A We were driven— Green and I were driven by [fol. 10] Agent Lee of the Federal Bureau of Narcotics.

Q And there were three of you in a car, were there, sir?

A Yes, sir.

Q And whose automobile was that?

A That was Agent Lee's automobile.

Q And that's a gentleman who is a member of the Federal Narcotics Bureau?

A Yes, sir.

Q And will you tell his Honor where you went down town in the City of Richmond?

A We went down Macdonald Street and turned right on Eleventh Street and made another right turn and parked in front of the parking lot.

Q And where was this telephone that you mentioned, sir?

A That was just off the sidewalk in the parking area, off of Nevin.

Q And was this a public phone, sir?

A Yes, sir, it was.

Q Then tell us what happened in this area?

A We had got the signal that—

Q Well, without repeating any hearsay, sir, did you receive a signal?

A Yes, sir, I did.

Q From who, sir? A From Agent Groom.

Q And then will you tell us what you did next?

A Mr. Green and I entered the phone booth together, [fol. 11] and I placed a twin phone, a hearing apparatus, on the receiving end of the phone, and I furnished Mr. Green with a dime, which he inserted in the phone booth, and then dialed a number.

MR. CURTIN: At this time, Your Honor, may the record show I am showing to Mr. Moran, counsel for the defendant, a photograph, before showing it to the witness, Your Honor.

THE COURT: It may so show.

MR. CURTIN: (Handing)

MR. MORAN: (Examining)

THE COURT: Where was Mr. Green's hotel room where you arrested him?

THE WITNESS: It was on Second and Macdonald Streets.

THE COURT: Second and Macdonald.

THE WITNESS: Yes, sir.

Q (By Mr. Curtin) This photograph, Mr. Armenta, that has been just shown to defense counsel, can you identify that photograph for his Honor, the Court?

A Yes, sir, I can.

Q What does that photograph depict, sir?

A The phone booth from which Mr. Green and I made the phone call.

Q And is that picture a fair representation of the area and the scene about which you just told us you made a phone call with Mr. Green?

A Yes, sir, it is.

[fol. 12] MR. CURTIN: At this time, Your Honor, may we ask that this be introduced in evidence as People's Number 1.

THE COURT: It will be received in evidence and marked People's Exhibit Number 1 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 1.)

Q (By Mr. Curtin) Now Mr. Armenta, you stated that a number was dialed.

A Yes, sir.

Q Did you see that number being dialed?

A Yes, sir, I did.

Q Who dialed the number? A Mr. Green.

Q And what number did he dial, sir?

A It was BE 21879.

Q And then will you tell us— You say you had attached another receiver to the phone, sir?

A Yes, sir, I had.

Q And could you hear the conversation that was then had on the phone?

A Yes, sir, I could.

Q Will you then tell us if you recognized any voice with whom Mr. Green had a conversation?

A Yes, sir, I did.

Q And did you have occasion to have heard that voice before that time on the 21st of December, 1961?

A Yes, sir, I had.

[fol. 13] Q Did you hear that voice since that time on the 21st of December, 1961?

A Yes, sir, I have.

Q And whose voice was that, sir? A Mr. Cooper's voice.

Q And Mr. Cooper, is that the defendant in this matter?

A Yes, sir, it is.

Q And are you familiar and know Mr. Cooper when you see him?

A Yes, sir, I do.

Q Do you see him present here in court?

A Yes, sir, I do.

Q Will you point him out to his Honor?

A It's the gentlemen seated on the end of the table.

MR CURTIN: May the record show that the witness has identified—

THE COURT: Yes, it may so show.

Q (By Mr. Curtin) Will you tell us, then, what the conversation was between Mr. Green and Mr. Cooper?

A As I recall it, a woman answered the phone, and Mr. Green asked for Joe, and she called—she said, "Just a minute," or something like that. She called Joe, and the next voice I heard was Mr. Cooper's voice. And Green said, "Joe?" And Mr. Cooper said "Yeah." And Green said, "How are things?" And Joe said, "All right, I guess." And then Mr. Green said, "How about a deuce?" And Joe said, "Yes." And there was a kind of a pause, and then Green said, "Well, what do you want me to do?" And Green said—Mr. Cooper said, "Well, [fol. 14] let's see." And then Mr. Green said, "Well, how about Newall's?" And Joe said, "Well, that's as good a place as any." And Green said, "When, right now?" And Joe Cooper said, "Yes, right away."

Q Now, sir, you've testified that you're a member of the State Bureau of Narcotics. Are you familiar with the terminology of the word deuce?

A Yes, sir, I am.

Q And have you heard that word used before, sir?

A Yes, sir, I have.

Q Is that used in the narcotic traffic and in the narcotic world, sir?

A Yes, sir, it is.

Q What is the meaning of the word deuce?

A Deuce is used in referring to bindles of heroin or capsules of heroin.

Q Now, after this conversation, was it concluded with what you have just told us, sir?

A Yes, sir, it was.

Q Tell us what you did next and what you saw Mr. Green do next?

A Well, Mr. Green and I left the phone booth and entered Mr. Lee's vehicle again. And we proceeded out to the vicinity of 23rd and Cutting Streets.

Q And what is at the location of 23rd and Cutting Streets, Mr. Armenta?

[fol. 15] A That is Newell's Market. It's a pretty large market.

Q And will you describe the area of the market at 23rd and Cutting, sir?

A The market is on the corner of 23rd and Cutting and on the West side of the same block there is a parking area which faces onto 22nd Street and Cutting.

MR. CURTIN: Your Honor, I'm showing another photograph to Mr. Moran, counsel for the defendant. (Hanging)

MR. MORAN: (Examining)

Q (By Mr. Curtin) Mr. Armenta, I will show you this photograph and ask you if you can describe that photograph for his Honor, the Court, what it depicts. (Hanging)

A (Examining) It depicts Newell's Market on 23rd and Cutting.

Q And can you tell us where that photograph would be taken from and the area to which direction it is pointed, sir.

A This photograph would be taken facing south.

Q And that would be toward the Newell's Market area, sir?

A This photograph would be taken facing south.

Q And that would be toward the Newell's Market area, sir?

A Toward the Newell's Market.

Q Does it also depict the parking area of Newell's Market?

A Yes, on the west side.

Q That location it depicts is in the City of Richmond, County of Contra Costa, State of California.

A Yes, sir, it is.

Q And it's a fair representation of what it depicts.
[fol. 16] A Yes, sir, it is.

MR. CURTIN: At this time, Your Honor, we ask that it be marked as People's Number 2 in evidence.

THE COURT: It will be received in evidence and marked People's Exhibit Number 2 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 2.)

Q (By Mr. Curtin) Now, sir, you told us that you had gone to that area with Mr. Green, is that correct?

A Yes, sir.

Q How did you get there?

A Agent Lee drove us in his vehicle.

Q And tell us what happened in that area, sir.

A We were approached on 23rd Street, and just prior to reaching Virginia and 23rd Streets, Agent Lee dropped Mr. Green off, and proceeded to the corner, just a few feet away where I left the vehicle.

Q Was Mr. Green in your sight at this time, sir?

A Yes, sir, just a short distance away.

MR. CURTIN: I show Mr. Moran another photograph, Your Honor. (Handling)

MR. MORAN: (Examining)

Q (By Mr. Curtin) This photograph that I have just shown to Mr. Moran, Mr. Armenta, can you describe what that photograph depicts, sir?

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A Yes, sir. It depicts 23rd Street facing—
[fol. 17] Q And what—Go ahead, sir.

A —facing Cutting. Also Virginia Street. Virginia Street comes into 23rd.

Q And is Newell's Market also shown somewhere in that photograph, sir?

A Yes, sir, at the end of 23rd.

Q Does that photograph fairly depict the area about which you just described at 23rd and Virginia where Mr. Green got out of the car and then you got out of the car shortly after him.

A Yes, sir, it does.

MR. CURTIN: At this time, Your Honor, we ask this be introduced in evidence as People's Number 3.

THE COURT: It may be received in evidence and marked People's Exhibit Number 3 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 3.)

Q (By Mr. Curtin) Now, tell us, then, what happened next, Mr. Armenta, after these events that you just told us.

A Mr. Green proceeded on the west side of 23rd toward Cutting. I crossed the street to the east side of 23rd and proceeded on the opposite side of the street, Green and I did, to Cutting. Mr. Green then crossed Cutting to the front of Newell's Market. And I crossed Cutting, also, and then crossed 23rd to the front of Newell's Market.

Q Was Mr. Green in your sight during this time [fol. 18] about which you have just told us.

A Yes, sir, he was.

Q Did Mr. Green, during this time that you have told us, contact any persons, sir?

A No, sir, he did not.

Q After this event about which have just told us, tell us what happened next?

A Mr. Green proceeded toward the west side of the market area toward the parking lot. At that time I proceeded toward the parking area, also.

Q And then tell us what happened next.

A A short while later I observed a blue Oldsmobile—I believe it was a '57—approaching 22nd Street and Cutting—on Cutting.

A And could you see who was in the car, sir?

A At the time it was approaching I couldn't see who was in the car. It made a right turn on 22nd off of Cutting, and at that time I observed the driver of the vehicle.

Q And you said, sir, the car was coming on Cutting. What direction on Cutting, sir?

A That would be—south, I believe.

Q Well, if I refresh your memory, sir, to tell you that Cutting runs west toward the San Rafael Bridge—

A Oh, it would be going east.

Q And then you saw the car turn on what street?

A Turn on 22nd Street off of Cutting.

[fol. 19] Q And you say that you were able to observe the person in the car at that time.

A Yes, sir.

Q Was there more than one person?

A No, sir, there was not.

Q And who was the person that you saw in the car?

A That was Mr. Cooper.

Q And that's the defendant in this matter.

A Yes, sir.

Q Then tell us what you saw next after you observed Mr. Cooper in the '57 Oldsmobile.

A At that time I was pacing back and forth in front of the market, and I observed Mr. Cooper's vehicle turn to enter the parking area.

Q Will you describe that for his Honor? You say the vehicle had turned east off of Cutting onto South 22nd?

A It turned onto 22nd and then shortly after it turned it proceeded to turn left into the parking area.

Q And then tell us what you observed next, Mr. Armenta?

A That's all I observed at that particular moment.

Q Now, did you observe any other persons in the area that you knew beside Mr. Green and Mr. Cooper?

A Yes, sir, I did.

Q And who was that, sir?

A That was Agent Groom.

Q Where did you observe Mr. Groom?

[fol. 20] A Mr. Groom was in the service station on the corner of 23rd and Cutting, and he crossed the street, 23rd, opposite me, and proceeded to a vantage point where he could see the parking area.

Q Well, sir, just tell us what you saw Mr. Groom do. He was in your sight at this time, is that correct?

A Yes, sir, he was.

Q And you say he was in a service station. Will you tell his Honor what service station that was, sir?

A I believe it's a Standard station; I'm not sure.

Q And what corner would that be on, sir, at 23rd and Cutting?

A That would be on the east—northeast corner, I believe.

Q And then after you saw Mr. Groom move, as you did, sir, tell us what happened next that you observed?

A Oh, about—just a couple minutes later I observed Mr. Green exit from the parking area towards me.

Q Where were you, sir, when you observed Mr. Groom moving as he did.

A I was still in front of the Newell's Market.

Q And what is there in front of the Newell's Market, sir?

A Well, there's a bus stop and also a mailbox, I believe.

Q And tell us then what you saw next after you saw Mr. Green coming from the lot, sir?

A Mr. Green crossed Cutting on 23rd. I crossed 23rd and I proceeded back toward Virginia on the opposite side of the street.

[fol. 21] Q And then tell us what happened next?

A Mr. Green reached Virginia and proceeded west on Virginia, where he met Agent Lee.

Q And tell us what you observed there, sir.

A I reached the vehicle shortly after Mr. Green, and Mr. Green at that time handed Agent Lee a small package.

Q Did Mr. Green get—or if you observed it—get into the vehicle with Agent Lee of the Federal Bureau of Narcotics?

A Yes, sir, he did.

Q Will you tell us, then, what happened after Mr. Green returned to Mr. Lee's car and this event had occurred?

A We returned to the Richmond Police Department.

Q Did you have occasion to see any other persons at the Richmond Police Department after you returned there with Mr. Green and Mr. Lee?

A Yes, sir, I did.

Q Who was there, also?

A Agent Groom and Agent Yates of the Federal Bureau of Narcotics.

MR. CURTIN: That's all of this witness at this time, Your Honor.

THE COURT: Cross examination, Mr. Moran.

CROSS EXAMINATION

BY MR. MORAN: Q How long have you been a member of the—is it the State Bureau of Narcotics?

A Yes, sir.

[fol. 22] Q How long have you been an agent in that organization?

A Just over a year.

Q And have you been working primarily in this area?

A In the San Francisco Bay area, you mean?

Q Yes. A Yes, sir, I have.

Q Did you receive certain education to prepare you for this position?

A (No response)

Q Were you trained? Did you go to an investigative school?

A No, I did not.

Q Did you have any educational preparation in college or high school for this job—specifically for this job?

A No, sir, I did not.

Q Your training, if you received any, then, was in the field working after you joined the bureau.

A In the field of narcotics?

Q Yes. A Yes, sir.

Q But there was no training program set up in the Bureau of Narcotics.

A No, there's not.

Q At what time was Mr. Green arrested at 2nd and Macdonald?

A It was early that morning. I'd say around 5:30 or 6:00.

Q And who made the arrest?

A I believe all three of us did.

Q I see. That would be you, Groom, and Stumpf.

A That's right.

[fol. 23] Q Was he alone in the room? A Yes, sir, he was.

Q Did you find any narcotics in his possession?

A I don't recall finding any, no.

Q You don't recall finding any? A No, sir.

Q Did you look for some? A Yes, sir.

Q But you're uncertain—Maybe I misunderstood you. Are you uncertain whether any was found, or not found?

A Well, I didn't find any myself, no.

Q Did you observe anybody else find any? A No, sir.

Q Was a search made for narcotics? A Yes, sir.

Q Did you have any notes made concerning that search?

A No, I don't.

Q Did you make any notes of any kind while you were there?

A No, I didn't.

Q Now, did you say that Green's clothing was searched before leaving the hotel?

A Yes, sir, it was.

Q By whom?

A The clothing that he put on, or the clothing in the room?

Q I don't know, whatever clothing you're talking about that was searched.

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A Well, all the clothing was searched by all three officers.

Q All three of them. A Yes, sir.

Q You mean you all examined or searched a different portion of his clothing?

A I don't know. We were examining all the clothing [fol. 24] that was in the room. It might have been examined two or three times.

Q It might have been. A Yes, sir.

Q Did you purposely arrange it so that each of you examined all of his clothes?

A Well, that's the general—

Q I don't want to know anything about a general rule, Mr. Armenta. You said it might have been searched two or three times. What was done?

A Everything in the room was searched.

Q Three times. A I don't know.

Q Well, how many times?

A I don't know. It was searched.

Q And how did you ascertain that all of it was searched three times?

A I didn't say it was searched three times.

Q Or that it was searched one time.

A Well, I went through the room very well myself.

Q You searched everything you saw. A Yes, sir.

Q Everything. A Everything.

Q And then what did Officer Stumpf search?

A I don't know. I was busy searching.

Q You didn't observe what he did.

A I knew he was searching. I didn't observe what he was searching.

Q And what did Agent Groom search?
[fol. 25] A He was searching, also.

Q So you searched everything, and then Agent Groom and Officer Stumpf went over at least part of your work.

A I don't know, sir. They were searching at the same time I was searching.

Q Did you have a check-off list to cover the items you searched?

A No, I did not.

Q Did you take all of his clothes with you when you left the hotel?

A No, sir, we did not.

Q Who was present when Green was interrogated down at the Richmond Police Department?

A I was present, Agent Groom was present, and I believe Officer Stumpf was present. And there might have been other officers from the Richmond Police Department.

Q And over what period did that interrogation last?

A I believe it was—about 8:30 or 9:00 until noon or shortly before.

Q And where was Green during the period from 5:30 to 8:30, if you know.

A He was at the Richmond Police Department.

Q Was any interrogation going on during that period?

A I wasn't with Mr. Green all the time.

Q Do you know of any interrogation going on during that period.

[fol. 26] A No, I do not.

Q Now, did you make any notes during this period of this interrogation?

A No, I did not.

Q Was any tape recording or other recording made during that period of interrogation of Mr. Green?

A I don't know.

Q Did you observe any recording at all?

A No, I didn't.

Q Was a reporter present? A No, there wasn't.

Q Now, is it my understanding that despite all this searching that went on before that Green was searched again?

A Yes, sir.

Q By all three of you or four of you or how many?

A By Agent Groom.

Q Just by Agent Groom. A Yes, sir.

Q And that was around 12:30 p.m.

A Between 12:00 and 12:30, I believe it was.

Q Had Green been out on the street since that time?

A No, sir.

Q And what did the search consist of?

A Just clothing, personal effects.

Q Well, in what manner? How was the search made?

A Everything was taken out of his pockets. His pockets were looked into. The shirt pocket, pants cuffs, socks, and so forth.

[fol. 27] Q I don't want the so forth. If there was anything else that was done, will you tell us, please.

A Just what I said, sir.

Q And so forth. Were his socks removed? A No, sir.

Q Were his pants removed? A No, sir.

Q Was his shirt removed? A No, sir.

Q Shoes removed? A No, sir.

Q Was this your first acquaintance, shall we say, with Mr. Green?

A Yes, sir, it was.

Q Did you decide that morning to—you or Mr. Groom, to use him as an informant?

A Did we decide that morning?

Q To use him as an informant. Yes, that morning.

A Yes, sir.

Q What did you know if anything about his background at that time?

A I didn't know anything about his background.

Q Did you know if he had any prior arrests?

A No, I didn't.

Q Did you check to see if he had any prior arrests?

A I didn't myself, no.

Q Well, was it done at your direction or with your knowledge?

A No, sir, I didn't.

Q You don't know. A I didn't.

Q Was it done with your knowledge or under your direction.

[fol. 28] A No, sir.

Q It was not done. A No, sir.

Q So you didn't know at that time whether he had any previous convictions for narcotics or any other offenses.

A No, sir, I did not.

Q Was there anything you knew about him to indicate to you that he was honest and trustworthy?

A What was that?

Q Was there anything that you knew about this man Green to indicate to you that he was an honest and trustworthy informant?

A No, sir.

Q Was he under— You said he had been placed under arrest?

A Yes, sir.

Q And for what violation, if you know?

A For sale of narcotics, I believe.

Q For sale of narcotics. A Yes, sir.

Q And do you know when that sale was supposed to have occurred?

A No, sir.

Q You weren't handling his case, I take it.

A I was off and on on the case.

Q Who was in charge of it? A Agent Groom.

Q But you didn't know anything about the charge for which you arrested him any details of it.

A No, sir, I did not.

[fol. 29] Q Did you know to whom he had sold this narcotic?

A No, sir.

Q Now, prior to December 21st, at 12:30 p.m., had you ever previously seen the defendant Joe Cooper?

A Yes, sir, I had.

Q And where and when?

A I had seen him in the vicinity of 6th and Macdonald Streets.

Q And on what date?

A I don't recall the date.

Q What month?

A It was either December or November, '61.

Q And did you know who he was on that occasion?

A Yes, sir.

Q And how did you identify him?

A He was pointed out to me by Agent Groom and one of the Richmond Police officers.

Q And where was this?

A In the vicinity of 6th and Macdonald Streets.

Q Well, in a store, on the street, in a car—

A On the street in the car.

Q Night or day? A This was in the evening.

Q What time? A I don't recall.

Q And he was pointed out to you by Agent Groom?

A Yes, sir.

Q Can you—Did he identify him by name?

A Yes, sir.

[fol. 30] Q What was Mr. Cooper doing at that time, if anything?

A He was driving a vehicle.

Q Were you standing in the street or in a car?

A I was in another vehicle.

Q And he was driving past you at night.

A He was driving and he also was parked one time.

Q How far away from him were you at that time?

A Just across the street.

Q How far away from him? A Across the street.

Q Could you tell us how many feet?

A No, sir. Just across the street.

Q I see. You were directly opposite?

A Yes, sir.

Q On Macdonald. A Yes, sir.

Q And were there lights on in his car?

A You mean the inside light, sir?

Q Yes. A No, sir.

Q Was he wearing a hat?

A I don't believe he was, sir.

Q Now, you testified you had heard his voice before. Would you tell me the occasion for that, that is, you heard his voice prior to the time that he was allegedly reached on the telephone on the 21st of December.

A When did I hear his voice before?

Q Previously, yes.

A I heard it on a tape recording.

[fol. 31] Q And where was the tape recording heard?

A This was in the Federal Narcotics Bureau office in San Francisco.

Q And who produced the tape? A Agent Yates.

Q Agent Yates works in the State Bureau of Narcotics, is that it?

A Federal Bureau of Narcotics.

Q Federal Bureau. A Yes, sir.

Q He and Lee? A Yes, sir.

Q And when was that heard?

A I don't recall the exact date when that was heard.

Q Well, recall the approximate date, then.

A Oh, I believe it was around the first of December.

Q Of 1961. A '61, yes, sir.

Q And this—was this tape of a telephone conversation?

A Yes, sir.

Q And was that made by you? A No, sir.

Q Do you know what number it was made on?

A No, sir.

Q How was Mr. Cooper identified in the tape?

A (No response)

Q How did you ascertain that that was the defendant's voice?

A Oh, Agent Yates told me it was Mr. Cooper.

Q Was there anything in the conversation to indicate that it was Mr. Cooper? Did he identify himself by name?

A No, just by his voice.

[fol. 32] Q Now, did Officer Yates tell you how he happened to acquire this taped conversation?

A Yes, sir.

Q And did he tell you on what phone line it had been—
—from which phone line it had been extracted?

A No, sir, he did not.

Q He just told you it was a phone. A Yes, sir.

Q Was it in Richmond? Was the phone in Richmond?

A Which one?

Q You said this was a transcribed recording of a phone conversation.

A Yes, sir.

Q Do you know whose phones were involved?

A No, I do not.

Q Is Agent Yates outside today?

A Yes, sir, he is.

Q Who else was present when you heard that recording?

A I believe Agent Groom was present.

Q The two of you? A Yes, sir.

Q Was Agent Yates there, also? A Yes, sir, he was.

Q And how long was this transcription that you listened to?

A Just about ten seconds, I believe, the part that I listened to.

Q You just listened to ten seconds of it.

A Just a short—short part of it, yes, sir.

Q And how many persons were speaking during that [fol. 33] ten-second part?

A Just Mr. Cooper and whoever made the call.

Q Well, who did make the call?

A I don't know. I don't know, sir.

Q Mr. Yates didn't identify the other person?

A No, sir.

Q After Agent Lee took you to the vicinity of 23rd and Cutting, as I understand it, Green got out and then you got out a moment later.

A Yes, sir.

Q As Green went into the parking lot, you were standing on the south side of Cutting, were you?

A No, I was still walking.

Q You were still walking where?

A Toward the parking area.

Q I see. How far were you behind Green?

A Oh, just—about from here to that rack—the coat rack. A little further, maybe.

Q How long did it take you to get from Lee's car to the position that you ultimately assumed in front of Newell's Market?

A Just a few minutes.

Q Well, one minute, two minutes, or what?

A A few minutes is all I can estimate.

Q You walked at a normal rate? A Yes, sir.

Q Now, after you arrived at the market, you mentioned that you were pacing back and forth in front of it. Would that be on the south side of Cutting?

A Yes, sir.

Q And you had a—in a position where you could see the parking lot.

A Yes, sir.

Q And you remained there until Mr. Green returned or left the parking lot.

A Yes, sir, I did.

Q How long was Green in the parking lot?

A I'd say about five minutes all together.

Q And you mentioned that you saw Mr. Cooper's car turn into that lot.

A Yes, sir, I did.

Q How long had you been in front of the market before you saw Cooper's car?

A About four minutes, I guess—three or four minutes.

Q And then after Cooper's car drove into the lot, how long was it before Green left the lot?

A Just a couple minutes, one or two.

Q Did Green ever leave that parking lot—I'll withdraw that.

After you saw Cooper's car turn right off of Cutting, you lost sight of both Cooper and Green, did you not?

A No, sir.

Q Who did you lose sight of, if anybody?

[fol. 35] A I lost sight of both of them, but not at that point.

Q Isn't it true that at the point after Mr. Cooper turned, that is, he made the right turn, that he went out of your vision for a couple of minutes?

A No, sir.

Q And isn't it true that in that two minutes, after the two minute period had elapsed, that Green walked from the parking area toward you at the corner—toward where you were at the corner?

A No, sir.

Q Have you read the Grand Jury transcript in this matter?

A Yes, sir.

Q I'll call your attention to page nine, lines 25 through 31, and ask you to read to yourself the question and answer there. (Handing)

A (Examining). Yes, sir.

Q And do you recall giving the testimony before the Grand Jury in which you were asked, "QUESTION: Then would you tell us what happened next, Mr. Armenta?"

"ANSWER: At that point, after he turned, made the right turn, he went out of my vision for a couple of minutes, and at that time in that two minutes, after that two minute period had elapsed, Green walked from the parking area toward me again to the corner."

Now, do you recall being asked those questions and giving those answers?

[fol. 36] A Yes, sir, I do.

Q Now, what's this about the Standard Oil Station where Mr. Groom was standing? Is that correct? He was standing there while you were standing in front of Newell's?

A No, sir. His vehicle was in the gas station.

Q That's on the northeast corner of 23rd and Cutting.

A Yes, sir.

Q Did he remain there, or do you know?

A He didn't remain there, no, sir.

Q Well, where did he go?

A He left the vehicle and crossed 23rd Street opposite me.

Q Is that all? A Do you want some more?

Q I asked you where he went, Mr. Armenta.

A I said he crossed 23rd opposite me on—where I was standing.

Q How long did he stay there? A Pardon?

Q How long did he stay there?

A He stayed there until Mr. Green left the parking area.

Q Could you continue to see him and did you see him?

A I saw him as he crossed the street, and also while he was on the opposite side of the street.

Q That would be on the north side of the street.

A Yes, sir.

Q And what's over there on that side of the street opposite where you were?

A Well, on the corner there's a vacant lot. There's—
[fol. 37] I believe there's a house after the vacant lot.

Q Well, is that where he was standing by the house?

A He was by the house, and also on a stairway of the house.

Q Directly across from the Newell Market.

A Well, directly across there's another gas station, but behind the gas station there's a lot.

Q I'm sorry.

A Directly across from the market is a gas station, and behind the gas station is a vacant lot. And that's the route he took.

Q Well, maybe you can answer this: After Mr. Groom got out of his car at the northeast corner of 23rd and Cutting, did you have him in sight in your view at all times?

A As near as I can recall, yes, sir, I did.

Q Now, we had a number of pictures here. Are there any pictures showing where Mr. Groom was standing?

A Not of the ones that I have seen.

Q Well, were there any others taken that you have seen at an earlier time that showed where he was standing?

A At different points, yes.

Q Well, I'm asking this point that you have described, across the street from Newell's.

A Well, he was at different points across the street from Newell's.

Q Tell me every point that he stopped at that you saw him.

A I don't recall how many points he stopped at.

[fol. 38] Q You mean you just saw him intermittently.

A No, sir.

Q You saw him all the time.

A I didn't count the times he stopped or paused. I wasn't concerned with the number of times he stopped and paused.

Q I see. But—

THE COURT: Do I understand he walked up and down over there?

THE WITNESS: No, sir. He'd walk and he would stop at different points.

THE COURT: Then move along—

THE WITNESS: He'd move along and stop again, pause for a second.

Q (By Mr. Moran) But you observed him wherever he may have been continuously during the time that Mr. Green was in the parking lot.

A No, sir, because I was trying to observe Mr. Green, also.

Q In other words, you'd look at one and then at the other.

A Well, just—Yes, sir.

Q All right. After Mr. Groom left the Standard Oil station, he crossed over to 23rd and Cutting on the north side of the street.

A Yes, sir.

Q Tell us where he went from there.

A He went through the vacant lot and then proceeded to a house and climbed a stairway of the house, I believe.

[fol. 39] Q Now, that house was somewhat opposite Newell's Market behind the service station?

A It was opposite the parking area.

Q Opposite the parking area. A Yes, sir.

Q Well then, what street would it be?

A The house would be facing 22nd.

Q Then that would be—that would be south of cutting:

A That's still north—still north of Cutting.

Q Be on 22nd north of Cutting.

A It would be east of 22nd.

MR. MORAN: Do you have any pictures of that, Mr. Curtin, that would demonstrate it, perhaps?

MR. CURTIN: Yes, Mr. Moran.

May the record show, Your Honor, that I am showing two photographs that might aid defense counsel. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Moran) I'll show you a photograph which appears to be in the general area described. Would you tell me if—where Mr. Groom was stationed in that area, if it shows.

A (Examining photograph)

Q Well, first let me ask you this: Does this appear to be a view taken looking south toward the parking lot—

A Yes, sir.

Q —of the Newell Market? A Yes, sir.

Q And it appears to be taken directly opposite the parking lot.

[fol. 40] A Yes, sir.

Q All right. Now, in that area, do you recall that Mr. Groom stationed himself for a period—

A I believe he was somewhere over here.

Q It would be over to the right.

A Right—to the right. Just a little bit back here.

THE COURT: Well, the record doesn't show which way is right.

MR. CURTIN: Pardon me, Counsel, and Your Honor. This photograph may further—I think it's a better photograph. (Handing)

MR. MORAN: (Examining) (Handing to witness)

A This is the vacant lot I was speaking of. He crossed here and went to a point on this house here.

MR. CURTIN: Your Honor, may we have that marked for identification that he was just pointing to, for the record.

THE COURT: Are you going to offer that, Mr. Moran?

MR. MORAN: As soon as I can figure them out. And I haven't done that yet. I will then offer the one that he's just—

THE COURT: Well, if you're going to offer it we'll have it marked Defendant's Number 1 for identification. Or are you offering it in evidence at this time.

MR. MORAN: I'll offer it in evidence.

THE COURT: All right. It will be received in evidence [fol. 41] and marked Defendant's Number 1.

(Whereupon the photograph above referred to was received in evidence and marked Defendant's Exhibit No. 1.)

THE COURT: Is that 22nd Street to the right on that photograph?

THE WITNESS: This street that you see there, Your Honor, is 23rd.

THE COURT: Yes. But this street here, would this be 22nd? Oh, this is 23rd Street here. I see.

THE WITNESS: This street here.

THE COURT: In other words, this is looking west across—

THE WITNESS: Yes, sir.

THE COURT: No, I'll take it back. Its—

THE WITNESS: It's looking west across 23rd Street.

THE COURT: Thank you.

MR. MORAN: 23rd or 22nd?

THE WITNESS: 23rd.

MR. MORAN: Now, I'll ask that this other photograph go in.

THE COURT: This one would be looking south across Cutting, showing 22nd Street to the right.

THE WITNESS: That would be looking south, yes, sir.

THE COURT: Across Cutting Boulevard.

THE WITNESS: Across Cutting, yes, sir.

THE COURT: It will be marked Defendant's Number 2.

[fol. 42] Do you want to start marking these?

(Whereupon the photograph above referred to was received in evidence and marked Defendant's Exhibit No. 2.)

Q* (By Mr. Moran) How far were you from the parking lot from the point where you were standing while Green was in the parking lot.

A I wasn't standing. I was pacing. I was at different points from the parking area.

Q All right, give me the distances, then, of the different points.

A Well, different distances at different points. I'd walk to the—

Q Give them all to me, if—

A I don't—

THE COURT: That would be the limits? Did you go clear down to the corner of 23rd?

THE WITNESS: No, sir, I did not.

THE COURT: Well, give us the limits.

I think that's what you want, how far away and how close to the parking lot.

A Well, I paced almost to the edge of the parking area and—

Q (By Mr. Moran) And then you'd walk east a ways?

A Then I'd walk east a ways.

Q And how far east did you walk while you were pacing?

A Oh, let's see—about from here to the seats for the spectators.

[fol. 43] Q That would be about thirty or forty feet?

A About twenty-five feet.

Q And you continued to pace back and forth, did you?

A Yes, sir. I'd stop at different intervals.

Q Now, how far was—You mentioned that Mr. Groom was across the street at some opposite point in the vacant lot. How far was that from the parking lot?

A I'd say about forty yards.

Q Forty yards. A An estimate.

Q Actually, Mr. Groom was in a vacant lot behind a fence, was he not?

A There is a fence by the vacant lot, yes, sir.

Q What?

A There is a fence by the vacant lot.

Q Well, he was behind it, was he not?

A Not at all times.

Q And at what time was he not behind it?

A When he wasn't behind it he wasn't behind it.

Q Where was he then?

A He was past the fence.

Q The vantage point where he stayed most of the time while Green was in the parking lot, was on the vacant lot behind the fence, isn't that true?

A No, sir.

Q I'll ask you to look again at your Grand Jury testimony page nine, commencing at line three, going down [fol. 44] through line fifteen. (Handing)

A (Examining)

Q Do you recall, Mr. Armenta, testifying before the Grand Jury and giving these answers in response to these questions:—

A Yes, sir, I do.

Q "QUESTION: Now, were there other agents, if you know, of the State Narcotics Bureau present in this area?

"ANSWER: Yes, sir. Agent Groom was also present.

"QUESTION: Will you tell us where you observed Agent Groom?

"ANSWER: Agent Groom was on the corner of 23rd and Cutting in a vehicle, which he left about the time that we arrived near the parking area. When Green and I arrived near the parking area, then Agent Groom left the vehicle and proceeded—" That would be west. "—opposite me. It wasn't on the street; it was a vacant lot behind a fence to a vantage point where he could observe the parking area."

"QUESTION: To your knowledge did he also see you and did you see him?

"ANSWER: Yes, sir."

You recall those.

A Yes, sir.

Q Would you point out the vacant lot behind the fence, if it appears, in either Defendant's Exhibit Number 1 or [fol. 45] 2. (Handing photographs)

Now you're pointing to a fence—

A Right there. (Indicating)

Q All right.

THE COURT: That's not very helpful. I don't see what he's pointing to.

THE WITNESS: This is the vacant lot I was referring to down there.

THE COURT: Oh, I see.

Q (By Mr. Moran) And it was behind the fence?

A This is the fence here running east and west.

THE COURT: That's on the back of the service station.

THE WITNESS: Yes, sir.

Q (By Mr. Moran) All right. So his vantage point, then, was in this lot behind this fence, is that correct?

A No, sir. He moved to a different point after that.

Q I see. Now, you didn't mention that to the Grand Jury, I take it.

A I wasn't asked that, sir.

Q And you didn't mention it to them.

A I said to a vantage point.

Q I see. All right. Then when Green left the parking lot, you followed him, I take it, back to the point where Agent Lee's car was parked.

A Yes, sir.

Q And that would be near 22nd and Virginia.

[fol. 46] A That's between 23rd and 22nd of Virginia.

Q I see. On Virginia. A On Virginia, yes, sir.

Q And did Agent Groom accompany you back to that point?

A No, sir, he did not.

Q Where did he go?

A I didn't see where Agent Groom went. I was busy watching Mr. Green.

Q Now, could you tell me how long it took from the time you and Green got out of Agent Lee's car at 23rd and Virginia, went to the parking lot as you've described, and then returned to Agent Lee's car.

A The total time elapsed?

Q Yes.

A I'd estimate it to be about twenty minutes.

Q All right. A Twenty-five minutes.

Q Now, of the total of that time, how much of that period was Green out of your vision.

A I'd say around two to three minutes.

Q And of that time—I'll withdraw that.

MR. MORAN: That's all.

THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Armenta, you told us, I believe, that you heard Mr. Cooper's voice after the 21st of December, 1961. When was it that you heard his voice, or did you have a conversation with him after that date?
[fol. 47] A I was present when Mr. Cooper was interrogated at the Richmond Police Department.

Q And what date was that, Mr. Armenta?

A That was on the 22nd, I believe, of December.

Q Is that the day following these events?

A The day following these events.

Q And was that the same voice that Mr. Cooper had then that you heard on the telephone on the previous day on the 21st of December, 1961?

A Yes, sir, it was.

Q Now, you've told his Honor that there was a period when Mr. Cooper and Mr. Green were not in your vision. Will you explain when that was, when that occurred, sir.

A Well, after Mr. Cooper made the right turn on 22nd Street, he started to turn left into the parking area. At that time I paced back toward 23rd Street and lost sight of both of them for a couple of minutes.

Q The phone number, Mr. Armenta, that you saw dialed and that you heard the conversation, had you made an investigation regarding that phone number?

A Yes, sir.

Q Did you determine to whom that phone number belonged?

A It belonged to—a residence on South 20th Street.

Q Had you determined if that was Mr. Cooper's phone number?

A Yes, sir.

Q Had you had knowledge where Mr. Cooper had [fol. 48] lived prior to the 21st of December, 19—

A Yes, sir.

MR. CURTIN: That's all of this witness, Your Honor.

RECROSS EXAMINATION

BY MR. MORAN: Q What inquiry did you make to determine who is the subscriber to Beacon 2-1879?

A I didn't make the inquiry myself.

Q Is there any of your other testimony here this afternoon information that was given to you by somebody else?

A No, sir.

Q So you don't know of your own knowledge that this was Mr. Cooper's phone number.

A No, sir, I don't.

Q You didn't make any inquiry on your own to determine that it was his number.

A I did not myself, no, sir.

Q Did somebody in your organization tell you that they had made an inquiry to determine that?

A Yes, sir.

Q Who? A Agent Groom.

Q He said he had checked— A Yes, sir.

Q —and he found that that was Joe Cooper's phone number.

A Yes, sir.

Q Did he say it in those words? A Yes, sir.

Q Did he tell you how he had checked?

A Well, the phone company, I guess.

[fol. 49] Q Well, is that what he told you?

A It's the usual way.

Q Is that what he told you?

A I don't recall exactly what he told me.

Q Now, this blue Oldsmobile. Did you determine who owned that car? I believe you have testified that you saw Cooper's car.

A I believe it was registered to a female.

Q So when you referred to it as Cooper's car, what you meant by that is a car that he was driving.

A That he had been seen driving previously, numerous times.

Q Well, you didn't mean by your earlier testimony that that is his car, registered to him.

A No, sir.

Q You determined, one way or another, that it's registered to somebody else.

A I didn't say that.

Q Do you know to whom—Do you know who owns this car that you're talking about?

A I don't know who owns the car, no, sir.

Q Did you make any note of the license number of this car that you said you saw come down Cutting, turn right toward the parking lot?

A No, sir, I did not.

Q You never actually saw it turn into the parking lot at any time, did you?

[fol. 50] A I didn't see it enter the lot, no, sir.

Q And you didn't see it leave the lot, did you?

A I didn't see it leave the lot, no, sir.

Q And you didn't see it while it was in the lot, did you.

A No, sir.

MR. MORAN: That's all.

MR. CURTIN: Nothing further of this witness.

THE COURT: The witness may be excused?

MR. CURTIN: Yes, sir.

THE COURT: It's almost 3:00 o'clock. Would you prefer to take the recess now rather than interrupt the witness?

MR. CURTIN: Yes, Your Honor. We'll call as our next witness Agent Groom.

THE COURT: We'll take the recess first rather than interrupt the witness.

(Recess taken)

(After recess)

THE COURT: Let the record show that the defendant is present in court with his counsel.

You may call your next witness.

MR. CURTIN: Agent Groom, Your Honor.

HOWARD W. GROOM,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

[fol. 51] THE CLERK: What is your full name, please?

THE WITNESS: Howard W. Groom, G-r-o-o-m.

THE COURT: Take the witness chair, Mr. Groom.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Groom, what is your address, for the record, please?

A 22 Copper Avenue, Berkeley, California.

Q And what is your business or occupation, sir?

A I'm an agent for the Bureau of Narcotic Enforcement, State of California.

Q And approximately how long have you been so employed?

A Approximately three and a half years.

Q Mr. Groom, then you were so employed on December the 21st, 1961.

A Yes, sir.

Q On that day, Mr. Groom, do you recall the events of that day?

A Yes, sir.

Q Will you tell us, Mr. Groom, if you had occasion to meet Frank Green, a person by the name of Frank Green on that date.

A Yes, sir, I did.

Q And will you describe that person for his Honor, the Court?

A Frank Green is a colored male adult in his late twenties or early thirties, approximately five feet eleven or six feet, slender build, a hundred and sixty, sixty-five [fol. 52] pounds.

Q And what was the occasion, if you did have an occasion, sir, to meet him on that date.

A I went to his hotel room that morning with Agent Armenta and Officer Stumpf for the purpose of arresting him for a narcotic violation.

Q And did you or did you not, sir, have a warrant for his arrest?

A I had a warrant for his arrest.

Q And did you have occasion to place him under arrest, Mr. Groom?

A Yes, sir. I served the warrant on him at his room.

Q Will you tell us what occurred there, Mr. Groom.

A I knocked on the door; he asked who was there. I told him Groom. He answered the door and I told him he was under arrest and showed him the warrant.

Q And where was this, sir?

A It was the Shamrock Hotel, 2nd and Macdonald Avenue. And I believe the room number is eighteen.

Q And is that location, sir, in the City of Richmond, County of Contra Costa?

A Yes, it is.

Q How was Mr. Green dressed when you served the warrant upon him?

A He had a pair of shorts on. And that is all.

Q Will you tell us then what occurred next after serving [fol. 53] the warrant upon him?

A We searched his room, his person, and his clothing.

Q Then what did you and Mr. Green do next?

A I had him get dressed. I searched each article of clothing as he put it on. He would choose an article of clothing, what he was going to wear, I would search it and he would put it on.

Q And—

A We then went to the Richmond Police Department.

Q And Mr. Groom, then tell us what occurred at the Richmond Police Department.

A We talked to Mr. Green briefly, and then we put him in an interrogation room and went back out in the street for an hour or so. Then we returned, took him upstairs to the vice office where we talked to him further.

Q Was there any person in the interrogation room with Mr. Green?

A When we went out in the street?

Q Yes, sir. A No, sir, he was in there by himself.

Q And then when you returned did you get him in the interrogation room?

A We took him from the interrogation room, took him upstairs, yes, sir.

Q And was he by himself when you took him from that location upstairs?

[fol. 54] A Yes, sir.

Q Then will you tell us—tell his Honor where you took Mr. Green upstairs?

A It's on the third floor of the Hall of Justice, Richmond Police Department, where they have a large office that the vice group occupy.

Q And Mr. Groom, did you have a conversation there with Mr. Green?

A Yes, sir.

Q And did you have a conversation with him regarding Mr. Joe Cooper?

A Yes, sir.

Q Did you yourself know or have seen Mr. Joe Cooper prior to this occasion on the 21st of December, 1961?

A Yes, sir. I knew him and had seen him.

Q Mr. Groom, do you see Mr. Joe Cooper present here in the courtroom?

A Yes, sir, I do.

Q Would you point him out to his Honor?

A He is the gentleman on the extreme—my extreme right at the table.

MR. CURTIN: May the record show that the witness has identified the defendant.

THE COURT: Yes.

Q (By Mr. Curtin) Mr. Groom, then did you have a conversation with Mr. Green regarding narcotics? [fol. 55] A Yes, sir, I did.

Q Then tell us what occurred next after this conversation with Mr. Green.

A He was again searched, supplied with \$20.00 in marked funds and went out to make a phone call with Agent Armenta and Agent Lee, followed by myself and Lieutenant Sullivan.

Q And will you tell us how you followed them, sir.

A They drove in Agent Lee's car, Lee driving, Armenta and Green as passengers, myself and Lieutenant Sullivan followed in my State vehicle.

Q And where did you observe Mr. Armenta, Mr. Lee, and Mr. Green go, sir?

A They drove directly to a parking lot on Nevin, between Eleventh and Twelfth, where they parked and went in and made a phone call in the phone booth on the property of the parking lot.

Q And People's Number 1 in evidence, sir, is that the area that you observed them go to? (Handing photograph)

A That is the parking lot and the phone booth on the parking lot where the call was made from.

Q And tell us what you observed there, Mr. Groom.

A Agent Armenta, Mr. Green, got out of the car, and I informed them to go ahead and make the call—

Q Now, prior to that, sir, had something occurred?

A I had received a radio transmission from Agent Yates of the State—correction, the Federal Narcotic Bureau, [fol. 56] reau, who informed me that the—

MR. MORAN: We'll move—

MR. CURTIN: I'm sorry, sir. Without repeating that.

Q (By Mr. Curtin) You had received a radio message.

A Yes.

Q And was that on a car radio, sir?

A It was on the State Highway Patrol radio which State cars are equipped with.

Q And did you recognize Agent Yates' voice in that message?

A Yes, sir.

Q Then after receiving that message, you had a conversation, or did you indicate in some way to Mr. Armenta a message.

A I told him to go ahead and make the call, that the car was in front of the house.

Q Then what did you see, Mr. Armenta and Mr. Green and Mr. Lee do? Those three persons.

A Mr. Green—Mr. Lee remained in his vehicle, and Mr. Green and Mr. Armenta got into the phone booth together. Armenta put a device on the phone and it appeared that they were making a phone call.

Q Now sir, after you observed Mr. Green and Mr. Armenta in the phone booth, then tell us what next occurred?

A They emerged from the phone booth and got back into Agent Lee's vehicle. We pulled alongside them, and they stated that the call had been made and they were to go to 23rd and Cutting, Newell's Market. Agent Lee [fol. 57] didn't know the best way to get there, so we told him to follow us and we drove and they followed us.

Q And you said Lieutenant Sullivan was in your vehicle?

A Yes, sir.

Q With you, sir. And then tell the route that you took to his Honor, the Court.

A We drove out Nevin to approximately—I don't know, 14th, 16th, 12th, somewhere in there, turned right to Macdonald, went down to Macdonald and turned right again. I believe it's the—Santa Fe Avenue, where Macdonald goes under the underpass we took the road to the right. We did not go under the underpass. Drove down

on that to 23rd and then down 23rd to the vicinity of Virginia and Cutting.

Q Tell his Honor, the Court, then, what you observed in the vicinity, if anything, of 23rd and Virginia Streets in the City of Richmond on the 21st of December, 1961.

A Prior to arriving there, we had motioned the other car to go ahead of us. We observed them stopping, and at that time we went on down the street and we pulled into the Standard station and could observe Mr. Green walking down on the west side of 23rd and then a little later we saw that Agent Armenta was coming down on the east side of 23rd following.

Q For the record, how much—

THE COURT: Just a minute.

You said "we." Who was in the car with you?

THE WITNESS: Myself and Lieutenant Sullivan.

[fol. 58] Q (By Mr. Curtin) And you stated that you saw Mr. Green walking down the west side and then you said after an interval of time you saw Mr. Armenta. Can you tell us what the time was, sir?

A Well, a matter of possibly half a minute or so.

Q And could you observe, if you could, Mr. Armenta and Mr. Green at the same time.

A Yes, sir.

Q Down the street. Then Mr. Groom, tell us what happened next?

A Well, they both crossed Cutting, then Armenta crossed 23rd, and followed Mr. Green as he walked into the area of the parking lot, just west of Newell's Market.

Q Now, sir, showing you People's Number 2, can you indicate or tell his Honor where it was that you were on that photograph when you observed Mr. Green and Mr. Armenta.

A Well, we were—This photograph is taken from the most northerly portion of the driveway of the Standard station at 23rd and Cutting, the Standard station being on the northeast corner. We were parked in approximately this location where we could look across. This is almost where we were parked, where the picture was taken from. Although the view would be wider.

THE COURT: That isn't in evidence, is it?

MR. CURTIN: Yes, it is, Your Honor, People's Number 2 in evidence, for the record.

[fol. 59] THE COURT: Oh, excuse me.

Q (By Mr. Curtin) Then showing you People's Number 3 in evidence, will you indicate on this photograph for his Honor where you saw Mr. Green and where you saw Mr. Armenta.

A Well, they parked just—

MR. CURTIN: Did you want to look—

MR. MORAN: May I stand behind here so I can follow.

A They parked on 23rd Street, which this photograph depicts—well, let me start—This photograph depicts 23rd Street heading south from just north of Virginia Street. And they parked in an area just north of Virginia on 23rd, and that's when we went by them. As I was driving down the street I didn't see exactly what happened behind me at that time.

Q (By Mr. Curtin) It was after you saw their car stop that you saw Mr. Green and Mr. Armenta, is that correct?

A Yes, sir.

Q And indicate where you saw those two persons on People's Number 3 in evidence.

A Is this—

Q Yes, the one you're holding.

A I first observed Mr. Green to the best of my recollection on the west side of 23rd Street approximately twenty-five to forty feet from the corner, walking south on 23rd.

Q And where did you see Mr. Armenta?

A I saw him a short time later coming down on the [fol. 60] opposite side of the street.

Q And then tell us what happened next, Mr. Groom?

A Well, Mr. Green went into the parking lot and Mr. Armenta was standing there where he could keep him in view—

MR. MORAN: I'll ask that that go out as the witness' conclusion as to what Mr. Armenta could—

THE COURT: Well, I suppose it doesn't mean he did. It means he was at a place where it was possible, I assume.

The motion will be denied.

Q (By Mr. Curtin) Go ahead, sir.

A I then crossed 23rd Street, went through the lot, went up on some stairs and stood on a porch of a house which fronts on 22nd Street where I had a clear view of the easterly two-thirds or one-half of the parking lot—Newell's parking lot.

MR. CURTIN: (Showing photograph to Mr. Moran)

Q (By Mr. Curtin) I'll show you this photograph, Defendant's Number 1, Mr. Groom; can you indicate on that photograph to his Honor where you were when you said that you did these things?

A I was on the—The large white house that shows in the center of the photograph shows a set of back stairs and a back porch or a platform, and I was standing on that porch or platform, looking out.

Q Now, sir, are you—

MR. CURTIN: Well, feel free to go up there, if you [fol. 61] want.

MR. MORAN: Thank you.

Q (By Mr. Curtin) Now, sir, did you have this photograph taken that you're holding in your hand as Defendant's Number 1?

A Yes, sir.

Q Are the conditions the same in that photograph as they were when you told his Honor about the events that you have just described?

A Not exactly, no, sir.

Q Will you tell his Honor what conditions have changed in that photograph, sir?

A At that time the house was—had just been completed construction and they had not yet put the fence around the back part and the south side of the white house.

Q And will you indicate on that photograph to his Honor what fence you're talking about that had not as yet been erected on December the 21st, 1961.

A The fence along the south and east of the—I believe it's a four-plex that shows in the center of the picture.

Q So then when you tell us that you went west across 23rd and through the vacant lot, you were able to go up

on the stairs of the house depicted in that photograph which is depicted there now with a fence around it.

A I was able to cross the lot and go directly up the stairs without anything interfering with me.

[fol. 62] Q And from that location, sir, were you able to observe Newell's parking lot;

A Yes, sir.

Q And showing you Defendant's Number 2, will you indicate for his Honor and for Mr. Moran where you were in relation to number one and number two as depicted in both those photographs.

A Well, this—Is this number two? This number two photograph was taken from a position just alongside of this back projection of the house just south of the fourplex I had previously indicated. That is a view from the ground level across Cutting at the entire parking lot of Jack Newell's Market.

Q All right, sir. And then will you tell us where you able to see Mr. Armenta from the location shown in Defendant's 1 and Defendant's 2?

A From Defendant's 1 I was considerably higher and I had a clear view of the entire front of Newell's Market, and as I say, probably the most easterly half of the parking lot. And I could see both Agent Armenta and Mr. Green at all times.

Q Now, sir, you stated that you had observed Mr. Green from the Standard Oil station on the northeast corner of 23rd and Cutting in the City of Richmond.

A Yes, sir.

Q And where did you see them from there, sir? Where was—

[fol. 63] A I saw him as he entered the parking lot. Both he and Mr. Armenta were in my view at the time that I left the service station and started across the street. I could see Mr. Green and Mr. Armenta, both. Mr. Green was in the parking lot area, and Mr. Armenta was on the sidewalk area.

Q And tell us, did you continue or were you able to continue and did you continue to see Mr. Green?

A Yes, sir.

Q Will you tell us what you observed and what you did as you observed these things.

A Mr. Green stood in the parking and then he moved back closer to the wall of the market, and stood there for approximately ten or twelve minutes. And then he suddenly started to walk out into the parking lot. And I could see that he was going to go out of my view. So I ran down the stairs and stood alongside of the house where I had a view of the entire parking lot.

Q And did you continue to have Mr. Green in your view?

A Yes, sir.

Q Then tell us what you observed next?

A I observed Mr. Green go up to the Oldsmobile, which I recognized as the car that Joe Cooper usually drove, and talk to a man in that car who appeared to me to be Joe Cooper.

Q And then what did you see Mr. Green—Let me withdraw that. Will you tell us where you first saw the [fol. 64] 1957 Oldsmobile that you just told us about.

A It was parked in the lot in the westerly half of the parking lot approximately the center of the lot. It was facing Cutting Boulevard.

Q Did you see the car prior to that, sir?

A No, sir.

Q Then tell us what you observed next?

A Mr. Green stood by the driver's side of the car for a minute, possibly a minute and a half and walked away toward 23rd and Cutting, the corner out of the parking lot. At that time I was unable to locate Agent Armenta visually so I proceeded to keep Mr. Green in view, as he crossed Cutting and came up 23rd Street back toward Virginia.

Q And what did you see there? Or what did you do next, Mr. Groom?

A I followed Mr. Green as he walked up the street, and as he turned onto Virginia between 23rd and 22nd I saw him come into Agent Lee's view, and then I crossed the street to where Lieutenant Sullivan had driven my car, reentered my car.

Q And what did you do next, sir?

A Then we drove next to the vehicle occupied by Agent Lee, Agent Lee held up something and said, "He scored two bindles."

Q Can you tell us what happened next?

A We made a U-turn, went down 23rd Street to [fol. 65] Portrero, went west on Portrero to 22nd, and were going down 22nd trying to see if the car was still in the lot, when we observed the Oldsmobile pull out onto 22nd, practically in front of us. Mr. Cooper looked right at me, made a right turn onto 22nd, another right turn on Cutting, drove down Cutting to 26th where he made a left turn, and parked on the nearest corner of 26th and Cutting. He motioned to a colored female adult who was between 26th and 25th, just having crossed 26th, I assume. She came back to the car to talk to him. We drove by again. He was again looking out the window at the woman. We drove down approximately a half or three-quarters of a block and parked and watched. Then when he proceeded up 26th Street we tried to locate him and lost him at that point.

Q Now, Mr. Groom, for the record, then you state that you saw Mr. Green approach this Oldsmobile and you said the person in there appeared to be Mr. Cooper. Was that the same person that you saw driving the car out of the lot at the time that you just indicated to us?

A Yes, sir.

Q And how many persons were there in that automobile?

A One.

Q And did you ever see more than one person in that car?

A Never.

Q From the time that you saw Mr. Green walking on 23rd Street near Cutting until the time that he reentered [fol. 66] the car with Agent Lee, who if anyone did you see Mr. Green contact other than Mr. Cooper whom you have just told us about?

A He contacted only Mr. Cooper.

Q Now, after you observed this, tell us what you did next, Mr. Groom?

A Well, when we couldn't locate Mr. Cooper, we went back to the police department where Agent Lee turned over to me two bindles of a white powder.

Q Sir, you said that when you couldn't locate Mr. Cooper. I believe you told his Honor that Mr. Cooper had parked the car at 26th and Cutting?

A Yes, sir.

Q And tell us what happened after you parked the car there.

A Well, we parked down a ways and watched him and then he pulled off. And by the time we got around and got back we had lost him from view and we couldn't find him.

Q So was it from then that you returned to—

A From then we returned to the police department.

Q And there you contacted Agent Lee, is that correct?

A Yes, sir.

Q Then what happened at the Richmond Police Department with Agent Lee, sir?

A Well, Agent Lee marked these two bindles and the piece of brown paper they were wrapped in, I marked them, and we opened them and made what we call a Markee field test. We got a color reaction, which indicated that the substance was possibly an opium derivative.

MR. CURTIN: Pardon me one minute, Your Honor.

(Mr. Curtin leaves courtroom and returns shortly thereafter.)

MR. CURTIN: Your Honor, may the record show, and defense counsel, that Mr. Reeves is handing me a brown Manila envelope in the presence of the Court.

THE COURT: The record may so show.

MR. CURTIN: At this time, Your Honor, I show it to Mr. Moran, counsel for the defendant. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Curtin) For the record, Mr. Groom, you stated that you made a test of the objects handed to you by Agent Lee. I'm going to show you this brown Manila envelope and ask you to observe the contents of the envelope and tell us if you can identify them, sir. (Handing)

A (Examining) The two paper bindles are the ones that Agent Lee handed me the afternoon of the 21st.

A They have my initials on them.

Q And did Agent Lee hand you another object besides those two bindles, sir?

A A small piece of paper.

Q Did you subsequently, sir, make some sort of a container for those three objects?

A Yes, sir.

Q Will you tell us what that was?

[fol. 68] A I filled out this envelope and I handed it to Mr. Reeves just after I handed him these.

Q Did you keep the objects that you have identified, the two bindles and the brown piece of paper, in your possession until you handed them to Mr. Reeves?

A Yes, sir.

Q And when you handed them to Mr. Reeves, is that the time that you made out the envelope, the container for those three objects?

A No, sir. I made the envelope out a little later. I handed the two bindles to Mr. Reeves and I returned in an hour or so and made out the envelope to contain them in.

MR. CURTIN: At this time, Your Honor, may we have those marked for identification only, the envelope and the three objects that it contains.

THE COURT: They will be received and marked People's Exhibit Number 4 for identification only.

Q (By Mr. Curtin) Now Mr. Groom, after making the test as you told us on these bindles received from Agent Lee, what did you do after that, sir?

A We then proceeded out in the street in an attempt to locate Mr. Cooper or his vehicle.

Q And was that on the same day as the 21st of December?

A Same afternoon, yes, sir.

Q 1961. Tell us what happened after you attempted to locate Mr. Cooper and his vehicle.

[fol. 69] A Well, his vehicle was located at 7th and Macdonald, and we spotted on the car until Mr. Cooper returned to it.

Q Where were you, sir, at this time when you saw the vehicle and Mr. Cooper returning to the vehicle.

A I was in the hardware store immediately adjacent to his vehicle.

Q And what location was that, sir?

A The vehicle was parked on the south—correction—the northwest corner of 7th and Macdonald, and the hardware store is just west of there on the corner of 7th and Macdonald.

Q And again for the record, what kind of a vehicle did you see there, sir?

A It was the same Oldsmobile, '57, light blue Oldsmobile.

Q That you had observed earlier that day, sir?

A Yes, sir.

Q Then tell us what happened or what you did there.

A Well, as I say, we waited until Mr. Cooper returned to the vehicle. He returned to the vehicle and as he was putting his key in the passenger side, I approached him on his right, and Agent Lee approached him on his left, and he was at that time placed under arrest by—correction—Agent Yates approached him on his left, and he was at that time placed under arrest by Agent Yates of the Federal Bureau of Narcotics.

MR. CURTIN: Your Honor, at this time may the [fol. 70] record show I am showing another photograph to Mr. Moran. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Curtin) I'll show you this photograph, sir, and ask you to identify that photograph or what it depicts for his Honor, the Court.

A This photograph depicting the northwest corner of 7th and Macdonald actually the portion of 7th Street just north of Macdonald.

Q And is that the area where you told his Honor that you saw the '57 blue Oldsmobile on the 21st of December, 1961?

A Yes, sir.

Q And there is a different car parked in that place in this photograph, is that correct?

A The Oldsmobile at that time was parked where the first car in this photograph shows.

Q But otherwise, are the conditions and the buildings and the area in that picture the same as they were at the time of the occurrences on the 21st of December, 1961.

A To the best of my knowledge they are.

MR. CURTIN: At this time, Your Honor, we would offer this in evidence as People's Number 5.

THE COURT: It will be received in evidence and marked People's Number 5 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 5.)

[fol. 71] Q (By Mr. Curtin) Now, you stated that Mr. Yates approached Mr. Cooper at his left, and what did you do, sir?

A I approached him on his right.

Q And then what happened next, sir?

A We got to him at approximately the same time. Mr. Yates showed him a badge and said, "Joe, you're under arrest."

Q And then after these words were spoken, what happened next?

A Well, I took him by his right wrist and I assume that Agent Yates had him by his left wrist. And he motioned down and said, "It's there in the car over the sun-visor."

Q What side, or where are you in relation to the car, sir, parked there on 7th—

A We are standing at this point by the right side of the car, the right front seat of the car, just outside the car.

Q And is that on the driver's side or—

A On the passenger's side.

Q You're still on the sidewalk, sir. A Yes, sir.

Q And tell us what happened next after Mr. Cooper said, "There it is."

A Mr. Cooper said, "It's there under the sun visor." And someone, either Yates or I, asked him, "What?" And he said, "The marijuana cigarettes." I think he said then, "But I didn't put them there, someone else put them there." And at that point he took his left hand and put

it into his right shirt pocket and removed an object, a brown paper wrapped object and started to put it in his [fol. 72] mouth. He had his head down toward his chest. He was stooped over, because he was in the act of purportedly looking into the car. He reached his hand into his pocket and came up with this package. I released his right hand, grabbed his left hand to try and prevent him from putting this package in his mouth.

Q And when you grabbed his left hand, tell us what happened next, sir?

A I don't know exactly what happened. I know my finger went in his mouth and also the package.

Q Will you tell us—

A Then he proceeded to chew on my finger.

Q Well, how did your finger go into his mouth, sir?

A Well, he forced my finger in with the package and everything went in together.

Q And then tell us what happened next.

A Well, he chewed on my finger and I couldn't get it out; he wouldn't let go of my finger.

Q Tell us then what happened, sir?

A I finally pulled my finger out of his mouth. It felt like the first joint had been bitten off. I thought that was enough and I pulled the finger out. And in the meantime other officers had arrived.

Q Then what happened to the object that you say you saw Mr. Cooper put into his mouth?

A I never saw it again. I assumed he swallowed it. [fol. 73] Q And again for the record, would you describe that object, sir?

A It was a small package wrapped in what appeared to be brown paper.

Q And sir, did you, after getting your finger out of his mouth—tell us what you observed about your finger.

A My finger was severely lacerated, my right index finger.

Q Did you have occasion to have treatment or medical attention for your finger?

A Yes, sir, I did.

Q Where was that, sir?

A At the Permanente Hospital in Richmond.

Q And who treated your finger, sir?

A Doctor Flint. He's been in charge of the case. Doctor Qwan initially treated my finger.

Q And how long have you had treatment for your finger, sir?

A I am still going twice a week.

MR. CURTIN: At this time, Your Honor, may the record show I am showing to Mr. Moran two photographs. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Curtin) I'll show you these two photographs, Mr. Groom, together. They've been seen by Mr. Moran, the defense counsel. Can you tell us what those photographs depict, sir?

A Those are pictures of my finger taken after it had been bitten.

[fol. 74] Q And are those pictures, sir, a fair representation of the condition of your finger after it had been bitten?

A Yes, sir.

Q Approximately how long after the occurrence on the 21st of December, 1961, were those pictures taken, sir?

A They were taken on the 29th of December.

MR. CURTIN: At this time, Your Honor, we'll offer both of these pictures in evidence.

THE COURT: They will be received in evidence and marked People's 6-A and B in evidence.

(Whereupon the photographs above referred to were received in evidence and marked People's Exhibit Nos. 6-A and 6-B, respectively.)

Q (By Mr. Curtin) Mr. Groom, after this occurrence, tell us what happened next?

A Well, after I got my finger out of Mr. Cooper's mouth, he was apparently still chewing something and I—the other officers were holding him and there was a big to-do. I attempted then again to get him to open his mouth and he started spitting blood and I realized whatever he had in his mouth—if he had anything in his mouth, it had gone. He was then handcuffed and taken into the Richmond Police Department.

Q For the record, was there any blood on your finger that you observed?

A Yes, sir. My finger was lacerated and bleeding.
[fol. 75] Q Mr. Groom, then after this occurred at 7th and Macdonald, tell us what happened next?

A I walked over to the female who had been accompanying Mr. Cooper and also placed her under arrest. And then I was taken by Agent Lee and Stumpf to the Permanente Hospital.

Q Who was the female, sir, with Mr. Cooper?

A Edna Faye Carr.

THE COURT: I didn't hear that.

THE WITNESS: Edna Faye Carr, C-a-r-r.

Q (By Mr. Curtin) At the time, sir, of the placing her under arrest, was there anything unusual about her that you observed?

A At that moment?

Q Yes. A No, sir.

MR. MORAN: I'm sorry. I didn't get that.

THE COURT: He said, "No, sir."

MR. MORAN: What was the question?

MR. CURTIN: Was there anything unusual at that time that he observed about her.

MR. MORAN: I see. Thank you.

Q (By Mr. Curtin) Then, Mr. Groom, you said you went to receive medical attention for your finger?

A Yes, sir.

Q Now, after that occurrence, did you have occasion to see Mr. Cooper again?

A I saw him the following day.

[fol. 76] Q And where was that, sir?

A In the vice office of the Richmond Police Department, which I previously described.

Q And Mr. Groom, did you have a conversation with Mr. Cooper about the occurrences on the 21st day of December, 1961?

A Yes, sir, I did.

Q Was your conversation with him one that was freely and voluntarily entered into by Mr. Cooper?

A Yes, sir.

Q Was there any coercion, any promises of immunity made in that conversation?

A No, sir.

Q Were there any threats or any duress used in the conversation with Mr. Cooper?

A No, sir.

Q Who—

MR. CURTIN: I'll withdraw that, Your Honor.

Q (By Mr. Curtin) Will you tell us what was said by Mr. Cooper to you about the occurrences of the 21st of December, 1961.

MR. MORAN: If the Court please, before the witness answers that question, may I examine him briefly on the relevancy and on voir dire.

THE COURT: You mean on the voluntariness?

MR. MORAN: Yes. On that and on—the nature of his statement.

[fol. 77] MR. CURTIN: I have no objections to counsel doing that.

I was wondering if I could request of counsel and Your Honor the Court, to call a witness out of order, a Doctor Flint who is here at 4:00 o'clock. His testimony would be short.

THE COURT: Do you have any objection?

MR. MORAN: None at all.

MR. CURTIN: We could resume, if counsel has no objection.

THE COURT: All right.

THOMAS FLINT, JR.

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please?

THE WITNESS: Thomas Flint, Jr., M.D.

THE COURT: Just take the witness chair, Doctor, please.

DIRECT EXAMINATION

BY MR. CURTIN: Q Doctor, for the record, your address, please.

A The Kaiser Hospital at the corner of 14th and Cutting Boulevard in Richmond, California.

Q And Doctor, your business or occupation, sir?

A I am a physician and surgeon, specializing in surgery.

Q And Doctor, your training, experience and back-
[fol. 78] ground for your present position.

MR. MORAN: We'll stipulate to the doctor's qualifications as a medical surgeon, if that helps any.

MR. CURTIN: Thank you. We'll accept the stipulation.

THE COURT: So stipulated.

Q (By Mr. Curtin) Doctor, did you have occasion to treat Howard Groom for an injury to his finger after December the 21st, 1961?

A I did.

Q And by the way, do you see that person present here in the courtroom?

A I see Mr. Groom.

Q Will you tell his Honor when it was, Doctor, that you first had occasion to treat Mr. Groom for a finger injury.

A I saw Mr. Groom for the first time on December 22nd, 1961 in the surgery clinic at the hospital for a redressing for an injury which he told me had been sustained the previous day.

Q And Doctor, have you had occasion to treat him for this injury since the 22nd of December, 1961?

A My function has been evaluating progress. Mr. Groom has, to my personal knowledge, been in the clinic on numerous occasions. I myself have seen him twice since the first visit. Three in all.

Q Doctor, have you, from your own personal knowledge, seen or—seen any indication of any disability or
[fol. 79] permanent disability to Mr. Groom's finger?

A May I answer that in two parts, please.

Q Yes, sir.

A I have seen evidence of gradually decreasing temporary disability, and I have noted that progress has slowed up recently so that in my considered opinion there may be some permanent disability.

Q Doctor, I'll show you People's Number 6-A and 6-B, and ask you if this is the finger of Mr. Groom that you have treated, sir. (Handing photographs)

A (Examining) If this represents the right index finger, yes.

Q Doctor, you brought to court with you the medical records from Kaiser Hospital concerning the treatment of Mr. Groom's finger?

A Yes, I have them with me.

Q And all those records are kept in the ordinary course of business by the Kaiser Hospital at the time of the transaction.

A These records are kept by members of the Permanente Medical Group who practice medicine at the Kaiser Hospital.

Q And the entries on the business records for Mr. Howard Groom were made at the time of the occurrences, are they not, Doctor?

A The notes by the physician are made at the time. Other entries may be as required.

Q Could you indicate to the Court at the present time [fol. 80] the disability of Mr. Groom's finger for his Honor, the Court.

A At the time of my last examination of Mr. Groom, which was—a relatively short time—March 23rd, 1962—he demonstrated approximately forty per cent limitation of complete flexion, the ability to bend the two distal joints of his right major index finger.

Q In your opinion, then, Doctor, will there be a permanent limitation of action of the finger in any way?

A I anticipate—this is not a thing which I can state; I can merely give an opinion—I anticipate there will be a slight amount of permanent limitation of motion.

MR. CURTIN: That's all I have of this witness, Your Honor.

CROSS EXAMINATION

BY MR. MORAN: Q You mean his finger will be a little stiff in one joint?

A Probably in the two outer joints—distal joints.

Q Two outer joints. And what will that limitation of motion, what is the extent of that, that you would expect as a permanent disability?

A Well, I would anticipate the inability to touch the fingertip normally to the palm. In other words, in percentage, probably between ten and fifteen per cent of loss of motion.

Q There was no fracture.

A There was no fracture either clinically or by x-ray.
[fol. 81] Q How deep is the laceration?

A The lacerations were multiple and irregular and were relatively superficial.

Q Any stitches required?

A No stitches were taken.

Q And what generally has been the nature of the treatment?

A The original treatment consisted of the cutting away of the jagged edges of the superficial lacerations, determining the extent of the deeper damage due to the contusion from the pressure of the finger between two roundish sharp objects.

Q Well, he told you he had gotten bitten, didn't he?

A Yes. Between teeth.

Q Yes.

A And the evaluation of sensory changes—which there was total anesthesia present originally.

Q My question, however, was what generally was the treatment.

A Redressing of the wound at frequent intervals, at first about twice—two to three times a week, subsequently at longer intervals.

Q Has he been back there since March—what was it, March 29th?

A March 23rd.

Q Is he receiving any treatment now?

A No treatment with the exception of paraffin baths to increase the range of motion of the finger.

[fol. 82] Q How frequently are those given?

A May I check the record here?

THE COURT: Yes, you may.

A On March 23rd, 1962, I ordered paraffin baths and active and passive motion of the injured digits, injured finger, twice a week for a two months period. I have no personal knowledge that these treatments have been taken.

MR. MORAN: I believe that's all I have.

MR. CURTIN: Nothing further.

The witness may be excused?

THE COURT: The witness may be excused.

MR. CURTIN: We'll call Mr. Groom back to the stand.

THE COURT: Would you resume the stand.

HOWARD W. GROOM,

called as a witness on behalf of the People, having been previously duly sworn, resumed the stand and testified further as follows:

THE COURT: You are already under oath, Mr. Groom. Just be seated.

MR. CURTIN: I believe counsel had made a request—

MR. MORAN: Yes.

VOIR DIRE EXAMINATION

BY MR. MORAN: Q How any officers were present when this interrogation took place on December 22nd?

A When we interviewed Mr. Cooper there were myself, Sergeant Billingsley, Officer Stumpf, Agent Armenta, [fol. 83] Agent Lopez, and Lieutenant Sullivan.

Q Now, did you order or do you know if he had any medical treatment after his arrest?

A No, sir, I had nothing to do with his custodial care.

Q Was he a Federal prisoner?

A He was a State prisoner. But he was incarcerated in the Richmond jail.

Q You made no arrangements, made no request for medical care for him.

A No, sir.

Q He had complained to you, had he not, that his face and his lip was cut?

A Yes, sir.

Q That all his teeth were loose?

A He said that his teeth were loose, yes, sir.

Q I'm sorry.

A He did say that some of his teeth were loose.

Q But he told you all of them were loose, did he not, Mr. Groom?

A No, sir, I don't believe that he did.

Q And you observed scratches on his throat?

A No, sir.

Q He pointed those out to you, did he not?

A Not to the best of my recollection.

Q And swelling around his throat.

A Not to the best of my recollection, no, sir.

[fol. 84] Q You, I believe, used the phrase that there was a big to-do around the scene of his arrest. By big to-do, do you mean that this man was knocked down and kicked in the street?

A No, sir. We were trying to physically restrain him.

Q You were trying to physically restrain him.

A Yes, sir.

Q All right, I'll ask you again, was he knocked to the street?

A No, sir.

Q Did he fall to the street? A No, sir.

Q Was he kicked? A No, sir.

Q Was he struck? A No, sir.

Q Did any of the officers put their hands on his throat?

A No, sir.

Q Any of them grab him by the nose? A I did.

Q And lacerations resulted? A To his nose?

Q Yes. A It may be.

Q And nobody to your knowledge attempted to force this object out of his mouth, whatever it was, by either pushing or squeezing his throat.

A No, sir. I was in the position—

Q I'm sorry.

A I was right there by his mouth and throat and there was nobody else there except me.

Q I see. You were the only officer?

A No, sir. I was the only one in front of his face.

Q Did he have any—wearing any bandages the next day?

[fol. 85] A I don't recall any.

Q Still bleeding?

A Not that I could observe.

Q You had your finger bandaged by this time, didn't you?

A Yes, sir.

Q For the superficial lacerations that the doctor described.

A Yes, sir.

Q Now, I believe you told Mr. Curtin that there had not been any coercion or threats used on Mr. Cooper.

A In relation—

Q I'm thinking of this—just prior to the interrogation.

A You're talking about the interview?

Q Yes, sir.

A No, there had not been any. To my knowledge. I was there. He walked in the room and I talked to him.

Q Now, was there any coercion or threats used on any prior occasion that you know of?

A That was the only time I saw him after his arrest.

Q He asked you to see an attorney, did he not?

A Not me.

Q Not you. A (Shaking head)

Q Or nobody else in your presence.

A Not in my presence.

MR. MORAN: That's all.

THE COURT: You may proceed, Mr. Curtin.
[fol. 86]

CONTINUED DIRECT EXAMINATION

BY MR. CURTIN: Q Now, Mr. Groom, I believe my next question to you was, what was the conversation that you had then on the 22nd of December, 1961, at the Hall of Justice with Mr. Cooper.

A I asked him what it was that he had put into his mouth when he was placed under arrest.

Q What did he tell you, sir?

A He told me it was a marijuana cigarette.

Q And would you tell us what else was said at that time, sir?

A Well, I told him it didn't look like a marijuana cigarette to me. It was a lot shorter. And he said well

he had it folded in half. I asked him if he had it wrapped up—these are not exact—this is the best of my recollection of the context. He said it was wrapped in brown paper.

Q Was there any, sir, mechanical transcription or preservation of this conversation between you and Mr. Cooper made?

A Yes, sir.

Q And what was that, sir?

A A tape recording was made of the entire interview.

Q Was there any conversation with Mr. Cooper regarding what had happened to your finger, sir?

A Yes, sir.

Q What was that, sir?

A I said to him, "You would have been better off if you hadn't chewed my finger." And he said that he was [fol. 87] sorry, but he had heard about people getting choked and he thought that he might be getting choked. And then is when he made the complaints about his teeth being loosened and his nose being damaged. At that point I told him if he had let go of my finger I probably wouldn't have had to pull it out of his mouth.

Q Now sir, the automobile that you observed on the 21st of December, 1961, was a '57 Oldsmobile, you told us, is that correct, sir?

A Yes, sir.

Q And did you have occasion to see that car after that day?

A Yes, sir. I saw it again—I can't remember—two or three days later. Then I saw it again just recently.

Q And what was your occasion for seeing the car again recently, sir?

A I had some information which indicated that I should check the car again and more thoroughly.

Q Did you so check the car, sir? A Yes, sir.

Q And approximately when was this, Mr. Groom?

A I can't recall the exact date. It was last week, I believe, or possibly the tail end of the week before.

Q And what if anything did you find in checking the car again on this latter occasion?

A I found one marijuana seed.

Q And can you tell his Honor where you found that, sir?

A It was wedged beneath the carpeting actually on [fol. 88] the passenger's side of the car next to the seat.

Q And what did you do with that, sir, when you found it?

A I placed it in an envelope and I transported it to Richmond where I gave it to Criminologist Reeves.

MR. CURTIN: Pardon me one second, Your Honor.

(Mr. Curtin leaves courtroom and returns shortly thereafter.)

MR. CURTIN: Your Honor, may the record show that Mr. Reeves has handed me a second envelope in the presence of the Court and the presence of Mr. Moran. I'll show it to Mr. Moran at this time. (Handing)

THE COURT: Might I ask the relevancy of this, Mr. Curtin? It's outside of the issues. The only purpose I can see would be to show knowledge.

MR. CURTIN: That's the only purpose we had. Perhaps also, Your Honor, to show identity of the defendant the fact that he did state at the time of his arrest that there was marijuana in the car.

THE COURT: I see.

Q (By Mr. Curtin) I'll show you this envelope, Mr. Groom, and ask if you can identify that for his Honor, the Court. (Handing)

A (Examining) This is the envelope that I filled out and placed the marijuana seed in.

Q And will you examine the contents of that envelope, sir, and tell us if you can recognize the contents.

[fol. 89] A (Examining) This is a cellophane envelope containing a piece of paper that I placed in there indicating that this particular seed was found at 2:30 p.m. on April the 4th, 1962, in the vehicle, Memorial Temple Garage, San Francisco.

Q And Mr. Groom, you have had experience with the —with marijuana, sir?

A Yes, sir.

Q And you've handled and seen marijuana seeds in the past, have you?

A . Yes, sir.

Q Prior to this occasion.

MR. CURTIN: We ask that that be marked for identification at this time, Your Honor.

THE COURT: It will be received and marked People's Number 7 for identification.

(Whereupon the object above referred to was marked People's Exhibit No. 7 for Identification.)

MR. CURTIN: That's all of this witness at this time, Your Honor.

MR. MORAN: If the Court please, may I make a motion at this time that the conversation which this witness has testified to on December 22, 1961, concerning marijuana, and such part of his search of this automobile which relates to marijuana, go out. As I recall, the information charges the sale of heroin. There's never been any indication to me, either in the formal complaint or [fol. 90] informally, about a charge of possession or use of marijuana.

THE COURT: Well, I think it's admissible, as I see it, for only one purpose: At the time of his arrest he stated there was marijuana in the vehicle. On this occasion sometime later there is evidence of marijuana in it. Of course, some length of time has passed, but I suppose really that goes to the weight of it rather than admissibility. But it will be admitted for that sole purpose.

MR. CURTIN: May I also have the record show, Your Honor, that the defendant stated that what he had swallowed was also marijuana.

THE COURT: As I say, very frankly, I don't think it has any great weight.

MR. CURTIN: Yes, Your Honor.

THE COURT: I think legally it's admissible.

CROSS EXAMINATION

BY MR. MORAN: Q Mr. Groom, this marijuana seed, I didn't see it but—it's quite small, I take it.

A Quite small, yes.

Q And that was found by you in April of this year.

A Yes, sir.

Q Now, the car has been in State custody for how long?

A Since December. Last year.

Q December of 1961. A Yes, sir.

Q Now, this is the second search you made, [fol. 91] A This is the first real search I made. The second time I checked the car. The first time I didn't actually search it thoroughly.

Q I see. So you have a thorough search and a sketchy search, is that correct?

A Yes, sir.

Q What were you looking for the first time?

A Heroin.

Q Now, when did you make that search?

A I made that sometime after his arrest within a matter of two or three days.

Q And where did you make it?

A It was made at the Beacon Tow Service yard, which is on Macdonald Avenue in the vicinity of 2nd or 3rd Street.

Q Where did you make your more recent search?

A Memorial Temple Garage in San Francisco.

Q How long has the car been over there?

A It's been over there since December of '61. Exactly when it was towed over I don't know.

Q Now, when you first searched it, you told the Court here that this defendant had mentioned something about marijuana having been in the car or a cigarette?

A Yes, sir.

Q But you weren't interested in marijuana then.

A No, sir.

Q And you are now? A No, sir.

[fol. 92] Q Did you ever find any heroin in the car, either in your sketchy search or in your thorough search?

A No, sir.

Q Did you ever find any evidence of heroin on Mr. Cooper's person or in his clothing, on any of your searches?

A I only had occasion one time to observe what I thought was heroin in his possession.

Q Well, maybe you don't understand my question. Did you ever find any.

A No, sir.

Q You looked? A Yes, sir.

Q Thorough search?

A I'll have to correct that. I did not search Mr. Cooper or his clothing.

Q I see. Were you present when a search was made?

A No, sir.

Q Who did search him? A I don't know.

Q Did you search his home or his residence?

A I searched his room at his home on South 20th Street, yes, sir.

Q That's actually the residence of an aunt, Mrs. Gulley?

A Mrs. Gulley, yes.

Q You searched that. A Yes, sir.

Q Did you find any heroin? A No, sir.

Q Marijuana? A No, sir.

Q Any other narcotic? A No, sir.

[fol. 93] Q Was it a thorough search or a sketchy search?

A Yes, sir. It was a very thorough search.

Q When did you make that search?

A It was approximately a week after his arrest.

Q Had you been prevented from making an immediate search after the arrest?

A No, sir.

Q Mrs. Gulley allowed you to go in there, did she not?

A She gave her permission to search his room.

Q Now Mr. Cooper has been in custody since last December, has he not?

A That is true.

Q He hasn't gone back to the house. A No, sir.

Q You didn't find any heroin. A No, sir.

Q Now, you mentioned that \$20.00 was given to this Mr. Green.

A Yes, sir.

Q In State funds? A Yes, sir.

Q Do you have a record of the bills? A Yes, sir.

Q Where is it?

A The record of the bills?

Q Yes.

A It's in the arrest report.

Q Well, where is it?

A It's in the details of the arrest report.

Q Well, do you have it here, in San Francisco, Sacramento, or where?

[fol. 94] A Yes, there's one in this court.

Q Well, can I see it?

MR. CURTIN: I'll offer it to counsel to see that, Your Honor.

THE COURT: Would you want some time, Mr. Moran, to look it over?

MR. MORAN: I would like to. Would you rather have me wait?

THE COURT: Well, what I had in mind, it's twenty-five minutes after 4:00. If you want to continue the examination from that, you go ahead. But if you want a little time to look it over—Whatever you wish.

MR. MORAN: This matter is going to come up again. I wonder if it would be convenient to the Court to recess and let me have a few minutes with this so I will be prepared tomorrow.

THE COURT: All right. We'll take a recess, then, until 10:00 o'clock tomorrow morning.

You will make that available to him?

MR. CURTIN: Yes.

THE COURT: All right. We'll take a recess until 10:00 o'clock tomorrow morning.

(Whereupon an adjournment was had until Wednesday, April 11th, 1962, at 10:00 a.m.)

[fol. 95]

APRIL 11th, 1962

10:00 o'clock a.m.

PROCEEDINGS

THE COURT: The record may show that the defendant is present in court with his counsel.

I take it that you have finished examining the police report.

MR. MORAN: Yes, I have.

THE COURT: You may proceed.

(Witness for the People Howard W. Groom resumes the stand.)

CONTINUED CROSS EXAMINATION

BY MR. MORAN: Q Mr. Groom, your arrest report indicates that this informant Green was furnished with two \$5.00 bills and one \$10.00 bill, is that correct?

A Yes, sir.

Q And you recorded the numbers of those bills.

A Yes, sir.

Q Were the bills over located after they were given to Mr. Green on February the 21st?

A No, sir.

Q You searched the defendant's person or he was searched?

A He was searched and the money was not found.

Q Now, I understand that this Miss or Mrs. Carr, who was with him when he was arrested on the 21st of December, she was also arrested.

A Yes, sir.

Q And to your knowledge, was she searched?

[fol. 96] A I can only assume that she was. I wasn't present—I wasn't there.

Q You didn't participate, I know. A No, sir.

Q But at your suggestion or recommendation she was searched.

A I went myself to the hospital. The other officers took her in. I assume they had her searched. I wasn't present. I wasn't part of the booking procedure.

Q So far as you know, this marked money or recorded money was not found in her possession.

A That is true.

Q Now, at the time of the arrest, the defendant and Mrs. Carr were accompanied by three children, were they not?

A There were two or three. I don't recall the exact number of children.

Q Now, they had certain packages in their hands, did they not?

A Yes, sir.

Q Did you ascertain from them that there had been—that they had been Christmas shopping in the area, the immediate area of 7th and Macdonald?

A No, sir, I did not ascertain from them.

Q Did you look at the packages that were in their possession?

A No, sir, I did not.

Q To your knowledge did the other officers?

A Not to my knowledge.

Q Did you give any instructions that an effort be [fol. 97] made to determine where these purchases were made and to determine from the clerk in the store whether the money, this marked money, was available at the store?

A I gave no instructions.

Q Do you know if that effort was undertaken by any of the other agents or officers?

A Not to the best of my knowledge.

Q Now, so far as the State agents involved in this matter, were you in charge of their activities concerning this case?

A This is a difficult question. I—I would assume that I might be nominally in charge, although I am just an equal agent working with them. I probably was in Richmond more consistently than any one of the others, and for that reason you might say that I coordinated somewhat.

Q Were you the senior agent in point of service?

A By a matter of fifteen days, yes, sir.

Q All right. Well, for instance, the report, the arrest report, was signed by you.

A Yes, sir.

Q The case, I take it, was assigned to you.

A Cases are very rarely assigned to us. We generally develop them as we go along in the course of our investigation.

Q Well, of the various agents, were you primarily responsible for this particular case?

A Yes, sir, I would say I was.

Q Now specifically, Agent Armenta was a relative [fol. 98] newcomer to the bureau, was he not?

A Yes, sir.

Q In connection with this alleged purchase, did you tell Armenta what his duties were to be.

A Yes, I—I assume, now, that I told Armenta or suggested to Armenta that he go with the operator, Mr. Green, to monitor the phone call and to follow him—stay with him.

Q And you told him to stay with him.

A I can't recall exactly what I told him. This was an understanding. Agent Armenta has worked many, many cases, although he has only been with the bureau a year, and he knows what to do.

Q Did you tell him where he was to position himself?

A No, sir, I didn't.

Q Were you familiar with the area in the vicinity of Newell's Market?

A Yes, sir.

Q I mean prior to December 21st. A. Oh, yes, sir.

Q Had you had any previous, let's say, buys in that parking lot?

A Yes, sir, we had.

Q And could you tell us approximately how many?

A We had one previous buy in that immediate vicinity, connected with Newell's Market.

Q I see. Now, how long—approximately when did that take place?

[fol. 99] A The previous buy I believe was on November the 27th.

Q Now, did you cover that buy or were you assigned to it?

A I worked on that particular case and I assisted in the cover, yes, sir.

Q You assisted in the cover. A Yes, sir.

Q Now, by cover, it would mean the agents assigned to keep the suspects in sight, I presume, or to observe the buy.

A Yes, sir.

Q Where did you station yourself on that occasion, on the occasion of November the 20th?

A Well, first I stationed myself in the vicinity of 536 South 20th Street on that date.

Q And that was your vantage point to observe what was going on in the market—

A No, sir.

Q —in the parking lot.

A You asked me where I stationed myself on that date. That's where I stationed myself in connection with the thing that went on by Newell's parking lot.

Q Well, let's say in the cover activity, when you were covering the parking lot.

A It was nothing to do with the parking lot at Newell's Market on that date. We were—

Q Oh, I perhaps misunderstood you, then. I had understood that there was a surveillance or cover on the parking lot at some—in November.

[fol. 100] A No, sir. There was surveillance on that particular corner, Newell's—we didn't know exactly where it would happen on that particular—

Q Other than Newell's Market.

A Yes. It was to be in that immediate vicinity.

Q I see. Now, actually, that was the same situation that presented itself on the 21st of December; you didn't know whether it was going to be in the parking lot or in the market or where.

A That's correct.

Q All right. Now, why did you instruct Mr. Armenta to use the pay phone at—I believe it's 10th and Nevin, for the purpose of having this informant call?

A I didn't instruct Armenta to make the call from that particular phone. It came—Somebody suggested it. Why it was suggested exactly, I don't know.

Q Isn't it the usual and a good investigative practice in your bureau to have telephone calls of this type recorded?

A It depends entirely on the circumstances in which you are dealing with.

Q Well, tell me when it's good practice and when it isn't good practice.

A Well, it is not good practice when you think the person you call may immediately come to the vicinity where the call is being made; and you then can't take a recording device, for example, into downtown Richmond, [fol. 101] to make a call when you think the man might come and say "I'll meet you in five minutes at such and such a corner." If there's going to be a long range thing, you're going to have to call him and maybe call him back, or you're going to be able to know that you're going to be able to set it up for an hour or two later, then you can make a recording, certainly.

THE COURT: You mean the person you call might say, "Where are you," and he might come right to where the call was made from.

THE WITNESS: Yes, sir.

Q (By Mr. Moran) Well, for instance, Mr. Green, as you know, the informant, was the one quoted as having suggested Newell's, which is 23rd and Cutting.

A Yes, sir.

Q Now, they have recording equipment at the Richmond Police Department which is roughly what, 26th and Macdonald.

A Yes, sir.

Q And you have recorded similar telephone calls at that location at the Richmond Police Department.

A Yes, sir.

Q Now, it's just as convenient, just as quick, is it not, to get from 26th and Macdonald, to 23rd and Cutting, as it would be from 10th and Nevin.

A I would assume—The time limit would be very little different.

Q Now, actually you had had other informants make [fol. 102] other telephone calls to Mr. Cooper in attempts to purchase narcotics, had you not?

A This had been done. I had not, done it.

Q Well, you knew that it had been done.

A Yes, sir.

Q And that no sales resulted.

A That would be correct.

Q And on those other occasions, the phone conversation was recorded, was it not?

A That is true.

Q Now, would you tell the Court what the difference was—I'll withdraw that.

Was Armenta instructed not to record this particular conversation on December 21st?

A Would you repeat that question.

Q Was Armenta, Agent Armenta, instructed not to record the conversation or the telephone call to be made by Mr. Green?

A No, Armenta was not instructed not to.

Q Mr. Armenta said that you had advised him that you had made an investigation or an inquiry with the telephone company, and determined that the telephone number Beacon 2-1879, was listed to the defendant. Is that a correct statement or incorrect?

A I don't know.

Q You don't know whether you told him that.

A The number was looked up, and I—I may have told [fol. 103] him the results of the looking up. I didn't do it. I believe it was done by someone in the Richmond Police Department. I personally have no recollection of personally checking this myself. I may have told the results of the check that was made to Agent Armenta.

Q All right. But in any event you didn't make the inquiry.

A I have no recollection of doing it.

Q And you have no personal knowledge of whether that telephone number is listed to the defendant or not.

A I don't believe the telephone number is listed to the defendant.

Q I see. And you didn't so advise Mr. Armenta as he testified yesterday.

A I told Mr. Armenta that the telephone number was listed to the home of the defendant.

Q I see. That's what you told him. Now, you've also described this 1957 Oldsmobile as Cooper's car. Is he the registered or legal owner of that car?

A No, sir, he is not.

Q I'm sorry. A No, sir, he is not.

Q How many agents, officers, patrolmen, participated in the arrest of Mr. Cooper on the street.

A Myself, Agent Yates, Sergeant Billingsley and Officer Stumpf, and Agent John Lee was present. Whether he participated—Yes, he must have participated in the arrest; he was there. Five.

[fol. 104] Q Sullivan was there? A No, sir.

Q Armenta was there? A No, sir.

Q Lopez there? A No, sir.

Q McBee? A No, sir.

Q I'm just guessing at the pronunciation here. Wooshness?

A Wooshness was not there.

Q Now, you recall describing all of the names I have mentioned here, as well as the names you have mentioned, in your report as being the arresting officers in this arrest of Joe Cooper.

A That is a statistical report. The purpose of that is for statistics in Sacramento. And most of these men at one time or another had some part in the investigation of Joe Cooper.

Q They were not arresting officers or they were not present at the arrest.

A We put down anyone who had any part in the investigation for purposes of statistics in Sacramento.

Q I don't want there to be any misunderstanding. They were not present at the arrest, other than the ones you mentioned.

A They were not even in Richmond.

Q I see. Now, would you describe for the Court by standing up there the motions that Mr. Cooper went through when you and Yates came up behind him.

A I will describe it the best that I can recall at this time.

[fol. 105] Q Surely. As I understand he was by his car. Maybe you could pick up some object—

A This would be the front door of his vehicle, the passenger's front door.

MR. CURTIN: Pardon me, Your Honor.

I'm sorry, Mr. Moran. Could the witness describe—

When he says, "This would be the front door of the car", could he have the record show—

MR. MORAN: Well, he's standing at the end of the bench.

MR. CURTIN: Thank you.

A He, as I recall, was putting his key into the lock of the door. I came up on his right, Agent Yates came up on his left, showed his badge, said "Joe, you're under arrest." Joe turned to him, and then I, as I recall, took him by his right hand at that time. And Joe said, "It's in there. It's over the sun visor."

THE COURT: Looking into the car.

THE WITNESS: Looking into the car. He bent down to look into the car.

Q (By Mr. Moran) I see.

A And as I recall, Yates said, "What's in there?" And he said, "Marijuana cigarettes," or something—"Marijuana cigarettes, but I didn't put them there, somebody else did."

THE COURT: Did he remain bent down?

A Then he went down again. (Demonstrating) It was like this.

[fol. 106] Q I see.

A To the best of my recollection.

Q All right.

A And then at that point his hand came over, went into his shirt pocket, somebody said, "He's going for his pocket," or "He's going for his mouth," or something, whatever he said. And I saw the thing come up. I grabbed his hand, thumb out.

Q He continued to be bent over.

A Yes, he was still bent like that.

Q I see.

A And he forced everything in.

Q You were off to his right and behind him, were you not?

A No, sir. I was to his right and alongside and toward the latter part of that in front of him.

Q I see. But while he was bent over reaching for his pocket, you could see something was put into his mouth.

A I saw something in his hand, come out of his pocket in his hand.

Q I see.

THE COURT: His left hand.

THE WITNESS: His left hand, yes, sir.

Q (By Mr. Moran) You could see what it was, generally.

A It was a package wrapped in brown paper.

Q You're sure of that. A I'm positive.

Q You got a good look at it.

[fol. 107] A It was that far away from me. (Indicating)

MR. CURTIN: Could we indicate—

THE COURT: Indicating a matter of six or seven inches.

MR. CURTIN: Thank you.

Q (By Mr. Moran) And it was something wrapped in brown paper.

A Yes, sir.

Q And roughly the size that the People's Exhibit 4 would have been when all of the various papers were—

A That paper wasn't on it.

Q I see. Not this paper. The largest brown paper was not on it.

A That was not on that particular thing that you're dealing with now.

Q I see.

THE COURT: Well, for the record, what was the size of this object?

THE WITNESS: I think that counsel is fairly describing it. It was slightly larger—

THE COURT: Half an inch by an inch?

THE WITNESS: Oh, I see.

THE COURT: Something like that?

THE WITNESS: That's about an inch long and possibly—

THE COURT: Little over an eighth of an inch thick.

THE WITNESS: Quarter of an inch in diameter, perhaps, or more.

[fol. 108] Q (By Mr. Moran) Now, perhaps I forgot about this yesterday or didn't see it or didn't perhaps see that. Where does this piece of paper come in? Or has it been described by any of the witnesses.

A This has not yet been described or brought up.

Q I see. Now, you eventually ascertained, did you not, what amount of narcotics was in this—in these bindles, as you have described.

A I, sir, did not—

Q Well, Mr. Reeves did.

A Mr. Reeves did. That was done.

Q And that's indicated on your laboratory report. (Handing)

A (Examining) That's one paper, 0.1050G; number two paper is 0.1426G.

Q G standing for what? A I don't know.

Q You don't know. A No. I didn't write it. I don't know what he was indicating.

Q You had no occasion in the course of your work for the past three years to use that term—

A Oh, yes, sir.

Q —in a laboratory report on heroin?

A Yes, sir. But I don't feel prepared to testify to somebody else's personal notes.

Q I didn't say you were to testify to those. What is the term 'G, generally?

A G, I have no idea.

[fol. 109] Q Doesn't mean grains.

A Doesn't mean a thing to me, G; it means nothing.

Q Or the designation that Reeves has used there. That designation means nothing to you.

A To me, no, sir.

Q I see. Have you ascertained from any other source what amount of heroin was involved in these two bindles?

A That was the first time just now looking at that thing that I had ever ascertained how much was in the bindles.

Q Well, can you tell us now how much was in there?

A I don't know.

Q So you haven't ascertained yet. A No, sir.

Q Have you learned in your three and a half years experience with the Bureau of Narcotic Enforcement what the effect would be of swallowing heroin?

A It would depend upon the strength or the quantity, quality—strength of the heroin; it would depend upon how it went into the person's system; it would depend upon the person's body build. It would be difficult to say.

Q Well, you tell me, then, assuming a person swallowed heroin, what would the average or normal amount be that would cause death? The smallest amount that would cause death.

A Again, I couldn't possibly say.

Q You have no information on that.

A It would depend upon whether the person had been [fol.110] using heroin, whether they had developed a tolerance for it. If they had developed a tolerance, how high their tolerance was. There are many variables.

Q All right. Now, you have ascertained here, have you not, that the defendant Joe Cooper, to your knowledge, is not a user of heroin.

A Not to my knowledge he isn't.

Q All right. So assume that a person of his build, which I think you have indicated here is five foot nine, weight, 220 pounds, he's thirty-eight years of age. He's, according to your report, not addicted. He had no hyperdermic marks on him, did he?

A I don't know.

Q Mr. Cooper had no hyperdermic marks—

A I didn't examine him for hyperdermic marks.

Q Well, this report is signed by you. A Yes, sir.

Q Did you dictate this to somebody? A Yes, sir.

Q Somebody furnished you that information?

A I was told that he had no marks.

Q All right. Assume a person, then, of the type that we've just described, from your arrest report, swallows heroin. What amount would kill a man of this description? What is the smallest amount that would kill such a man?

A To answer you absolutely truthfully, I don't know. If it was pure heroin, I couldn't tell you the minimum amount—I couldn't tell you—that would actually kill a person.

[fol.111] Q Well, you're an expert. I'm not asking you to give me perhaps the exact amount. I want your professional and expert opinion in this regard.

A I don't know.

Q You don't—

A I honestly don't know.

Q You don't know. Which of the agents involved in this case would be qualified to give an answer on that, agents or officers?

A Possibly the chemist.

Q Mr. Reeves? A Possibly.

Q Mr. Groom, you created the impression, at least with me—I think you tried to convey it and did convey it to the Grand Jury and in your arrest report, that in your considered opinion this package that you said the defendant swallowed; was heroin.

A Yes, sir.

Q Now, have you made any attempt in the course of your investigation to find out for our information and the Court's information, what the effect on a person would be if he had swallowed heroin?

A I made an attempt to find out if he had swallowed heroin. And if that had been the case, I might be better prepared. He refused to take a test. We couldn't do anything about it.

Q You saw him that day; you saw him the next day. [fol. 112] A Yes, sir.

Q Heroin being swallowed by a man has an effect on him, does it not?

A It certainly should have, yes, sir.

Q Did you observe if that heroin had the usual effects that heroin would have if swallowed by a person?

A I have never dealt with persons that swallowed heroin, sir. I couldn't tell you what the usual effect would be of ingesting it orally.

Q Would you, during the next recess, find out from your superiors in the Bureau of Narcotic Enforcement if there is an expert or an employee who is familiar with such information.

A I will certainly do so.

MR. CURTIN: Well, Your Honor—

Pardon me, Counsel.

I would object that this would now be calling for medical testimony. The agents are qualified as experts in dealing with persons in the narcotic traffic.

THE COURT: Well, there really isn't any question pending, Mr. Curtin. He's asked the witness to make some investigation for him.

MR. CURTIN: As to an agent being qualified to testify as a medical—

THE COURT: Well, there really isn't any question pending at all to the witness. Mr. Moran has simply [fol. 113] asked him to ask the superiors what the effect would be of orally taking heroin.

MR. CURTIN: I again would object that this would be calling for speculation, because the facts in this—

THE COURT: I don't know what it calls for. It calls for him to ask his superiors what the results of certain things would be.

MR. CURTIN: All right.

THE COURT: Do you have any objection to him being required to do that?

MR. CURTIN: I'll withdraw the—

THE COURT: There isn't any question pending, actually.

MR. CURTIN: I'll withdraw it.

Q (By Mr. Moran) Did you make some search of Mr. Cooper on the street when you arrested him? A cursory or preliminary search.

A Yes, sir. A search was made. I didn't make it.

Q Were you present?

A I believe I was arresting Mrs. Carr about that time.

Q Did you observe whether or not he had some—what he's described as breath pills, some kind of a compound in his shirt pocket?

A I didn't see anything that was taken from him.

Q Who, as you recall, made that search?

A I don't recall.

[fol. 114] Q All right. He subsequently told you, did he not, that at the time of the arrest or just prior to the arrest that he had been drinking quite heavily?

A Yes, sir.

Q And you observed the fact that there was the odor of alcohol?

A No, sir, I didn't.

Q Did you attempt to ascertain that fact?

A No, sir.

Q He told you also that he believed that he either put in his mouth some of the breath pills or perhaps a marijuana cigarette.

A He said both things, yes, sir.

Q Now, Mr. Cooper was not questioned by you or any of the agents of the Bureau of Narcotic Enforcement after his arrest—I mean the day of his arrest, following his arrest.

A Again, there were other agents, and I wasn't there; I was down at the hospital. Now, who talked to him and what they said, I don't know.

Q Is heroin—I think you described it as a white crystal, was that correct, or white powdery substance?

A Heroin in its pure form or its nearly pure form is a white crystalline powder, yes, sir. It is not always white.

Q I see. And People's Exhibit 4, which we had a moment ago, that was white, as I understand your testimony yesterday.

A Yes.

[fol. 115] Q And that would be some indication that it is pure.

A No, sir.

Q Or nearly pure. A No, sir.

Q Perhaps I misunderstood you. A I say—

Q When it's in a white powdery form, what does that indicate?

A It indicates nothing whatsoever.

THE COURT: Well, it would indicate that whatever was used to cut it with was also white.

THE WITNESS: That could be, yes, sir. It could be cut with white material, also.

As far as the quality of the heroin is concerned, it has to be done chemically by a quantitative analysis. You can't—No one can tell by looking at it or even by tasting it or smelling it what the possibility of its being pure is.

Q (By Mr. Moran) But again, heroin in a pure state is white.

A Yes, sir.

Q And in an unpure state—

A It can also be white.

Q I see. Can it be an other colors?

A Heroin, when it's first manufactured, depending on the manufacturing process, can also be brown or pink.

Q I see.

A But generally, if it's well manufactured, if it's done properly, it's white.

Q And from the brown or pink color, does it remain that color or does it change to white?

[fol. 116] A No, it stays that color.

Q I see. Now, are there any other narcotics in powdery form that you are aware of that are brown in color—in powder form.

A Opium.

Q I see. Would that be about the same shade as heroin?

A No, opium is much darker brown.

Q I see. All right. Now, as I understand it, you proceeded on December 21st around—sometime during noon hour, 12:30—or between 12:30 and 1:00, to 23rd and Cutting.

A Yes, sir.

Q And you were parked on the north side of Cutting at 23rd and Standard station for a time.

A Yes, sir.

Q And after you observed Armenta and Mr. Green arrive at a point in front of Newell's, you saw Green go into the parking lot, did you not?

A Yes, sir.

Q Now, at that time you left your automobile, as I understand.

A Yes, sir.

Q Did Lieutenant Sullivan remain there?

A Yes, sir.

Q And you proceeded west. A Yes, sir.

Q Now, in order to—You went behind the service station; that is, there was the Richfield service station between you and Newell's Market.

[fol. 117] A Yes, sir.

Q Now, that service station extends about half the length of the block on Cutting between 23rd and 22nd, does it not?

A I wouldn't say half. But—it's a good portion of the block.

Q Substantial distance. A Yes, sir.

Q And immediately behind that service station and running for its length is a solid redwood fence, is there not?

A Yes, sir.

Q And approximately six feet high, isn't that correct?

A Approximately, yes, sir.

Q How tall are you? A Six feet.

Q All right. Now, as you proceeded behind the Richfield service station, I assume that you could not see either Armenta or Green.

A No, sir.

Q Then beyond that service station and beyond that fence, and facing on 22nd, is the—is an apartment house with a porch on the south side of it.

A Yes, sir.

Q And the porch is on the second floor. A Yes, sir.

Q And that's the one that you mentioned yesterday.

A Yes, sir.

Q Now, showing you Defendant's Number 1, it's a photograph of the apartment house, is it not? (Handing)

A (Examining) Yes, sir.

Q And to see the market—Let's face around here so [fol. 118] the Judge can see that, also.

To see the market you look out over this adjoining house, do you not?

A You look over this—this lower roof you can see over it clearly. The upper roof blocks your view, not of the market but of the lot.

Q All right. So by looking over the lower portion of the roof, you can see about one-third of the—or one-quarter of the easterly edge of the parking lot—easterly side of the parking lot.

A Yes, a third or—a third or a half. I can't recall exactly what it is. You can't see the entire lot, certainly, but you can see a good easterly portion of it. To break it down into thirds or quarters, I couldn't say.

Q All right. But then this roof line, the higher roof line of that adjoining house blocks the view of the westerly side of the parking lot.

A Yes, sir.

Q Now, I believe you mentioned this fence around the apartment house was since constructed.

A Yes, sir.

Q Now, at one point you left the porch, did you not, and came down to some other point.

A Yes, sir.

Q And where was that?

A It was right along this outer corner of this building [fol. 119] ing here, the projection of this building.

Q I see.

A I may have moved over. I can't recall now whether I moved over to the corner of the fence and then moved back. I made some movement there to try and conceal myself and still keep the whole thing in view.

Q Well now, it would be true, would it not, that in going up and down these stairs, your view of the parking lot is cut off completely.

A I don't recall. But it's entirely possible.

Q Well, do you recall that this house, this small part of this house, projects more easterly than the edge of the apartment building.

A That may be so. I don't recall.

Q But in any event, it's true that at times as you were going from the service station here over to this point, that the fence behind the Richfield station blocked your view.

A I believe I could see over that fence. But it would certainly block my view to a large extent.

Q And you had to look where you were going, too, I presume.

A Certainly.

Q And you had to look where you were going when you went up the stairs.

A That's right.

Q And when you came back down the stairs.

A That's right.

[fol. 120] Q So there were occasions when you were not able to keep Green in view.

A That's true.

Q Why did you go up on the porch?

A So I would have a view of the parking lot and Mr. Green, so I'd be able to keep him in view at all times.

Q Because of the elevation. A Yes, sir.

Q Actually, when you were down standing by this building on ground level, it's somewhat—it's a level lot there, is it not?

A That's right.

Q Substantially level. You had an imperfect view of the parking lot, did you not?

A Yes, I had a good view.

Q I see. But again, you originally chose the elevated point for a better view.

A No, I originally chose it primarily because I would be less obvious at that point.

Q You mentioned yesterday that when you saw Cooper's car after coming down off the porch, it was in the westerly and central part of the parking lot.

A To the best of my recollection, yes, sir.

Q Now, do you know how those lanes face in the central part of the parking lot?

A Uh-huh.

Q In what direction from your vantage point?

[fol. 121] A Well—

Q Would the car be head-on or at an angle?

A The lanes are at a single angle, north. They're not straight.

Q They're not straight. Now, however the parking lanes immediately next to the sidewalk on Cutting are straight.

A Definitely.

Q At right angles. A Yes, sir.

Q Then behind that, the various rows are angled to the street.

A Yes, sir.

Q Now, showing you Defendant's Examiner's Exhibit Number 2, is this substantially the view that you would get after you came down off the porch and were standing next to that building? (Handing photograph)

A Yes, sir.

Q Did you ever ascertain how far you were away from this car you've described as Cooper's, from your surveillance point that you have described here.

A Never accurately, no, sir.

Q What in your opinion would be a fair estimate?

A Well, Lieutenant Sullivan told me that Cutting Boulevard at that point is 65 feet wide. So by extension, I would say that I was probably 140 or 150 feet away.

Q From the central—that is, your vantage point, south, to the—somewhere near the center of the parking lot.

[fol. 122] A That's my estimate.

Q A hundred and fifty feet. Mr. Groom, because I believe it's important—maybe you haven't had an opportunity to do so—I paced that distance off. It's 72 yards, which would be 156 feet. Would it be convenient for you to check my figures?

A You mean—

Q At noontime.

A Not at noontime, no sir. Oh, if I'm off the stand I'll be glad to go, yes.

Q Maybe—Could you have an officer—call an officer down in Richmond to take a measurement from, first of all the porch, or in line with the edge of that apartment building, south to the middle of the parking lot.

A Yes, sir, I'll do that.

Q Thank you. You mentioned certain times in your arrest report, Mr. Groom. And I call your attention to the following: "The defendant arrived at the parking lot at 12:55 p.m." Who did you get that figure from?

A I don't recall. After the thing was all over with, we sat down and put all—the best we could—some people made notes of times here and times there, and we—I tried to put it down the best I could from—I personally took no notes on times and so on and so forth.

Q Well—

A And I talked to the fellows, what time did this [fol. 123] happen, what time did so and so forth, to try and get some close estimate of time.

Q In other words, in talking to all of these officers you made notes as to certain events.

A Yes, sir.

Q Where are those notes? A In my pocket.

Q And do they indicate which officer told you what?

A No, sir.

Q Let me see those notes.

A (Producing documents and handing)

Q Do you have 12:55 indicated in there?

A 12:55. (Indicating)

Q And what do those notes indicate to you again?

A Well, it's, "Cooper shows, S.E. walks over, stands on the driver's side, walks away—makes a pass and walks away."

Q Now, so 12:55 is also indicated in your report and is the time that Cooper's car entered the parking lot, is that correct?

A Is that on my report? If it is, that is what I wrote.

Q Would you just refresh your recollection, and—
(Handing report)

A (Examining) Yes, sir.

Q In other words, 12:55 you wrote, "The defendant arrived at the parking lot.

A S.E. walked over and contacted him.

Q Right. Now, Green, after the contact was made, [fol. 124] walked back to 23rd and Cutting to the corner.

A Yes, sir.

Q What time did he arrive there?

A Well, the notes and the report indicate 12:57. He left Cooper and walked back to the corner.

Q So in a two minute period, Cooper arrived at the parking area, parked his car, Green came up to him, and left and walked back to the corner of 23rd and Cutting.

A These notes and that report, the times don't purport to be absolutely accurate. I mean, this is to try and pull the thing together in the timing. It might be two minutes, it might be two and a half minutes. I don't know exactly. That's the report.

Q Well, it's not important, you say?

A No, I say that is what I wrote in the report.

Q Well, you try and be somewhat factual in your report, don't you?

A I try— Yes, to show the picture as factually or logically as I can.

Q Now, actually, Armenta—Agent Armenta, when he told you what to write down in his report as to what he had seen, told you, did he not, that he kept Green constantly in view from the time they left the Richmond

Police Department until the time they returned to the Richmond Police Department.

A I don't follow your question.

Q Well, my question is, did Armenta tell you that?

[fol. 125] A No, that's something I wrote. I wrote that down from my own knowledge and my participation in the investigation.

Q Well, now, what did you write down about what Agent Armenta can testify to? In other words—

A He can be—

Q Let me withdraw that. As part of your detailed case report, you made a summary as to the testimony of the different witnesses.

A Yes, sir.

Q All right. Now, read for the record what you said as to Agent Armenta.

A "Agent Armenta can testify to being present when the informant was searched by Agent Groom, to monitoring the phone call and to keeping the informant constantly in view from the time they left the Richmond Police Department until the time that they returned."

Q Now, how did you learn that he claimed that he kept the informant constantly in view?

A I observed him. I was there.

Q You observed him constantly keeping Green in view?

A He was right with Green all the time.

Q I see. You heard him testify yesterday that for a full two minutes while Green was in the parking lot he couldn't see him at all, did you not?

A Yes, sir.

Q You heard him testify that he was pacing back and [fol. 126] forth, did you not, with his back to the parking lot at the time.

A Yes, sir.

Q You heard him testify that half the time he was watching you.

A I don't recall him testifying to that.

Q Do you recall him testifying that he watched you progress—

A Yes, sir.

Q —in a direction opposite from the parking lot behind the fence?

A Yes, sir.

Q Officer Groom, do you claim in this report that you had Green constantly in view from the time of the phone call until the time he handed the bindles of heroin to Agent Lee?

A Yes, sir. I claim that in that report.

Q Is it true?

A You have shown some minor exceptions.

Q Is it minor, Mr.—Let me put it this way: Was there anything about Mr. Green in your dealings with him before December 21st that led you to believe that he was an honest and trustworthy informant?

A Nothing whatsoever.

Q Now, you believed him to be unreliable, as a matter of fact, did you not?

A Yes, sir.

Q And you took certain precautions in order to overcome that unreliability of this informant.

A Yes, sir.

Q And one of those upon which your entire investigation was based, was to keep him constantly in view.

A Yes, sir.

Q And another was to put marked money on him so that it would be transferred to a suspect and later recovered from the suspect.

A Yes, sir.

Q To show a chain. A Yes, sir.

Q Green was arrested by you early that morning of the 21st for the sale of heroin.

A Yes, sir.

Q Subsequently prosecuted, A Yes, sir.

Q Was he sentenced? A Yes, sir.

Q For what offense?

A He was prosecuted and sentenced for possession of heroin.

Q For possession of what? A Of heroin.

Q And received a County Jail sentence? A Yes, sir.

Q You had reached an agreement with him, had you not, for him to act as an informant.

A Yes, sir.

Q And he was never prosecuted for selling heroin.

A No, sir.

Q That's what your warrant was for, however, the warrant upon which he was arrested.

[fol. 128] A Yes, sir.

Q Green, when he left the parking lot, returned to Agent Lee's car.

A Yes, sir.

Q You saw him get back in the car. A Yes, sir.

Q At that time you got a signal, I believe you said from Lee, that he had scored or that you had scored or that somebody had scored, two bindles.

A Yes, sir.

Q Was that expression used? Scored two bindles?

A I believe that was correct, yes, sir.

Q Indicating that a purchase of two bindles of heroin had been made.

A Yes, sir.

Q You then—Did Lee turn these bindles that you mentioned over to you at that time?

A No, sir.

Q Later in the afternoon, had he?

A In the Richmond Police Department.

Q What time?

A Approximately—I don't know. It was between 1:00, 1:30, possibly, somewhere around there.

Q You subsequently turned them over to Mr. Reeves, the criminologist?

A Yes, sir.

Q What time was that? A 10:00 o'clock the following morning.

Q So it was sometime after 10:00 o'clock the following morning that you—that Mr. Reeves made his examination and determined that it was heroin.

A Yes, sir.

Q You testified that you followed Cooper from this parking lot after this alleged transaction and followed him for three blocks and lost him.

A Yes, sir.

Q Why didn't you arrest him after this purported sale was consummated and Lee gave you the signals that you scored two bindles?

A We didn't know at that time that it was heroin.

Q I see.

A We hadn't made any tests.

Q I see. And Agent Lee had looked at it, I believe you said.

A He looked at the package.

Q I see. You didn't know it was heroin until after 10:00 o'clock the next morning, either, did you?

A I had made a test that indicated to me that it was heroin earlier that afternoon.

Q The whole purpose of the marked money, again, was to get it on the suspect's person, was it not?

A That's right.

Q Now, in addition to you and Sullivan, there were two other—at least two other cars of law enforcement of [fol. 130] ficers in the immediate area, were there not? Is that correct?

A That's right, yes, sir.

Q Were they connected by radio transmitter?

A There were—My car and one other car had radio communications.

Q Yates— A The third car did not.

Q Yates and Stumpf were in radio communication, were they?

A With Sullivan and I.

Q Was it important to you to keep this man in view?

A Not particularly.

Q I see. So that's why you got out six men or so in that afternoon to hunt all over Richmond for him, is that true?

A I don't follow your question, sir.

Q I'll withdraw it.

MR. MORAN: I am through with these questions. But as I understand it, you will be available after the lunch recess.

THE WITNESS: Yes, sir.

MR. MORAN: Thank you.

THE COURT: Well, it's 11:00 o'clock. Do you want to—

MR. CURTIN: I have some redirect, Your Honor.

THE COURT: How long will it take?

MR. CURTIN: Oh, approximately ten minutes.

THE COURT: Well, we'll take our recess first, then. We'll take our mid-morning recess.

(Recess taken)

[fol. 131] (After recess)

THE COURT: Let the record show that the defendant is present in court with his counsel.

Proceed, Mr. Curtin.

MR. CURTIN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Groom, Mr. Moran in his cross examination of you referred to another piece of brown paper that was in People's Number 4 for identification.

MR. CURTIN: (Handing)

MR. MORAN: (Examining)

MR. CURTIN: And may the record show that Mr. Moran is looking at it at the present time.

THE COURT: Yes, it may.

Q (By Mr. Curtin) And I'll show you this piece of brown paper and ask you, sir, if you can tell his Honor, the Court, if you can identify that, sir.

A That's the piece of paper that I took to Mr. Reeves for possible comparison that I found in the glove compartment of Joe Cooper's Oldsmobile.

Q And when did you find that piece of paper, Mr. Groom?

A 12/29/61.

Q That would be approximately a week after the occurrence.

A Well, I'm not certain. I didn't—Unfortunately, I didn't initial it. And Mr. Reeves put 12/29/61, and I must assume that he initialed it as soon as I gave it to him.

[fol. 132] Q But you did hand that to him personally, sir.

A Yes.

Q And do you recognize Mr. Reeves' signature?

A Yes, sir.

MR. CURTIN: Your Honor, this was a part of People's Number 4 and obviously it had been so identified prior to now. And there are the two—

THE COURT: Well, it's a piece of brown paper approximately three by five inches contained therein. Do you want it marked separately?

MR. CURTIN: No. So that the record will show that it's all a part of People's Number 4, Your Honor.

THE COURT: Yes.

MR. CURTIN: Fine.

Q (By Mr. Curtin) Now, you were asked on cross examination about searching a room that belonged to Mr. Cooper. And what was that address, sir?

A It was at 536 South 20th Street, Richmond.

Q And who lived there when you made the search, sir?

A Leona Gulley.

Q And to your knowledge, was she related in some way to the defendant in this matter, Mr. Joe Cooper?

A She told me that she was his aunt.

Q She is present here in court. You've seen her outside?

A She is out in the hall.

Q Now, you were asked on cross examination about [fol. 133] another event occurring in the area of 23rd and Cutting. And I believe you stated a date that I marked down as November 27th.

A Yes, sir.

Q Refreshing your memory on that date, is that the date of November 27th, 1961, that you were referring to?

A No, sir. I was incorrect. That was the—The date that I testified to as November 27th was actually December the 7th.

Q And that would be December the 7th, 1961, is that correct, sir?

A Yes.

Q And is that the date that you told Mr. Moran on cross examination that you had stationed yourself in the vicinity of 536 South 20th.

A Yes, sir.

Q Did you see Mr. Cooper, the defendant, at all that day?

A Yes, sir, I did.

Q And did you see any other person with Mr. Cooper on that day?

MR. MORAN: If the Court please, I'm going to object to this as improper redirect examination.

THE COURT: It will be overruled.

A No, sir, I saw no one else with Mr. Cooper on that day.

Q (By Mr. Curtin) Did you see Mr. Cooper's automobile on that day?

A Yes, sir. Mr. Cooper drove up to his house and got out of his automobile, the 1957 Oldsmobile that we have been referring to as his automobile, and went into the house.

[fol. 134] Q Did you see someone else use the car on that day?

A Yes.

Q If you did.

A A woman who we identified as Edna Faye Carr came out of the house and used that car.

Q Is that the same person that was with Mr. Cooper on the 21st of December, 1961, when he was arrested at 7th and Macdonald in the City of Richmond?

A Yes, sir.

Q And where did you see Edna Faye Carr go in the car, if you did, sir?

A She drove to Newell's Market and—

MR. MORAN: If the Court please, may I renew my objection as to this being improper redirect examination.

THE COURT: Yes, I think this is going a little far afield, Mr. Curtin.

MR. CURTIN: All right.

THE COURT: It will be sustained.

Q (By Mr. Curtin) Now Mr. Moran asked you on cross examination if you had done anything with Mr. Cooper or tried to determine anything as to the effect of

heroin upon him after his arrest on December the 21st, 1961. And I believe you told him that he had refused to take a test.

A Yes, sir. He was offered the opportunity to take the Naline test at the Oakland Clinic on Saturday, December the 23rd. He refused.

[fol. 135] Q And on cross examination I believe you told defense counsel that Mr. Cooper had stated that he had swallowed on one occasion marijuana, and then he stated also that he had swallowed breath pills.

A Yes, sir.

Q Can you tell us the order in which he told you those things, if you can remember?

A He told me first that he had swallowed marijuana. And then later in the course of the same interview he changed to saying that he had probably swallowed—or possibly swallowed some breath pills.

MR. CURTIN: That's all I have of this witness at this time, Your Honor.

THE COURT: Any recross, Mr. Moran?

RECROSS EXAMINATION

BY MR. MORAN: Q Had you seen Mrs. Carr use this 1957 automobile on more than one occasion?

A I only saw her drive it on that one occasion.

Q You hadn't kept a constant surveillance on this car.

A Not a constant surveillance, no, sir.

Q Now, you've talked to Mrs. Carr, have you not, in connection with various investigations.

A I talked to her very briefly in connection with this one investigation.

Q Did you ever ask her about her using this car?

A No, sir, I don't believe I did.

[fol. 136] Q Did she tell you that a relative, a close relative of hers, has a car identical to this 1957 Oldsmobile, same color, year?

A Mrs. Carr refused to state anything to me.

Q Do you know how many cars there are in Richmond, 1957 Oldsmobiles of this type and color?

A I have no idea.

Q When you saw her in this car near 536 South 20th, did you keep any notes on that occurrence?

A There were notes made, yes, sir. I don't have any now with me.

Q You don't have any now? A No, sir.

Q Did you note the license number of that car at that time?

A I can't recall.

Q Incidentally, where was—when you searched this car, this 1957 Oldsmobile, where was it when you first searched it? I think you said Richmond.

A The Beacon Tow Service in Richmond.

Q And it was there when you located this piece of paper that's part of exhibit four?

A Yes, sir.

Q Now, you didn't initial it? A No, sir.

Q Now, you didn't refer anywhere in your detailed case report to finding that piece of paper, did you?

A No, sir.

Q Now, this detailed case report was dictated or typed. [fol. 137] by you at some date after December 29th, 1961, was it not?

A I can't recall. I'd have to look at the report.

Q Well—

A Even then I'm not sure I—

Q I don't see a date, but perhaps you could—

A I probably dictated it around the 23rd or the 24th, as a matter of fact.

Q Of what month? A Of December, 1961.

Q (Handing report)

A (Examining) I can't tell. It's—

Q Well, let me call your attention to part of it. When you dictated this report, where was the car?

A I don't know.

Q Well, where was it stored at, at the time your report was written up?

A I don't know.

Q Well, what does it say on the report?

A It says the Memorial Temple Garage, San Francisco, California. I would put that other car whether it was there or not.

Q Really? A Yes, sir.

Q Could you go through this report, underline what parts you put in, whether you knew it to be true or not?

A In that particular case, the car would automatically be towed to the Memorial Temple Garage, so I would dictate that for the report.

Q Would you have something here that shows when [fol. 138] you wrote this up?

A No, sir. That's the weak part of our report to show the actual date we write it. It's not on there.

Q I see. Now, you're quite sure, however, that the search was made while the car was still in Richmond.

A Yes, sir. I went with Sergeant Billingsley—I didn't know where the lot was, even. He had to show me.

THE COURT: Do I understand that all cars are towed to this garage that are involved—or may be involved in the transportation of narcotics?

THE WITNESS: All cars that are seized by our bureau are impounded in a locked area in the Memorial Temple Garage, in that one place.

THE COURT: In that garage.

THE WITNESS: Yes, sir.

Q (By Mr. Moran) What work was done by Agent McBee on this case?

A Agent McBee and I staked out two or three times on Mr. Cooper's home.

Q And Agent Lopez?

A Agent Lopez and I also staked out on Mr. Cooper's home. Agent Lopez observed Mr. Cooper on the street on several occasions.

Q This was prior to December 21st? A Yes, sir.

Q And Agent Wooshness. When was the period of his activity in the case?

[fol. 139] He was along on one or two of the stake-outs. Exactly when, I can't say.

Q Now, you testified for the Grand Jury, did you not, in connection with this case.

A Yes, sir.

Q And that was on or about January 15th, 1962.

A Yes, sir.

Q Now, in that testimony, did you give any testimony concerning this paper which you found in the glove com-

partment that's part of exhibit number four, People's Exhibit Number 4?

A No, sir.

Q Did you know about it at that time? A Yes, sir.

Q Mr. Reeves compared it at that time. A Yes, sir.

Q Is there some way of ascertaining—for you to ascertain what date this detailed case report was written up?

A I probably can find out the date that it came out of typing from our office records.

Q Did you make a subsequent addition to the detailed case report which reflected this search?

A No, sir.

Q I believe you said you have no notes covering the date you made this search or the results of it.

A No, sir.

MR. MORAN: That's all.

MR. CURTIN: Nothing further at this time, Your Honor.

[fol. 140] THE COURT: You may step down, Mr. Groom.

Call your next witness.

MR. CURTIN: We'll call Lieutenant Sullivan.

NORMAN WESLEY SULLIVAN,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please.

THE WITNESS: Norman Wesley Sullivan.

THE COURT: Just take the witness chair there, Mr. Sullivan.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Sullivan, what is your address, please, for the record?

A 1726 Costa Avenue, Richmond.

Q And what is your business or occupation, sir?

A I'm a lieutenant in the Richmond Police Department.

Q And on December the 21st, 1961, what was your connection in the Richmond Police Department at that time?

A I was a lieutenant in charge of the vice squad.

Q And that normally deals with the narcotic investigations, is that correct, Lieutenant?

A That's right.

Q On that day, did you have occasion to be with any State agents in an investigation?

A Yes, sir, I was.

Q And who were you with on that day, sir?

[fol. 141] A Agent Groom and Agent Armenta.

Q And Lieutenant Sullivan, where was it that you were with them on that date?

A That was in the City of Richmond, in the vicinity of 23rd Street and Cutting—South 23rd Street and Cutting.

Q And before you got to that location, where had you started from?

A The Richmond Police station.

Q And who was there when you started from that location, sir?

A Agent Armenta, Agent Groom, Agents Lee and Yates, Agent Billingsley, Officer Stumpf, myself. I believe that's all.

Q And was there some other person with the law enforcement officers?

A A man by the name of Frank Green.

Q And for the record, what does Mr. Green look like, sir? Or what did he look like on that day?

A He's a colored man—

Q All right, sir. And would you tell us what was done in regards to Mr. Green, if anything, at the police station before you went to 23rd and Cutting, as you told us?

A He was searched by Officer Groom—or Agent Groom.

Q And tell us what happened in connection—Tell us what happened next after this, Lieutenant Sullivan?

A He left the police station, went to Nevin Avenue between 11th and 12th, where Agent Armenta and Frank Green placed a phone call.

[fol. 142] Q Where were you, sir, when this occurred?

A I was on the north side of Nevin a short distance from the phone booth.

Q With whom were you, sir? A With Agent Groom.

Q And the two of you were in a vehicle, weren't you, sir?

A Yes.

Q And after you observed this event, tell us what happened next?

A Agent Groom and myself, Agent Lee, Agent Armenta and Frank Green, Agent Yates and Officer Stumpf, all went to the vicinity of South 23rd Street and Cutting.

Q And at the location of 11th and Nevin, was there any message or communication received by you from anyone, or that you heard?

A I didn't—I heard Officer Groom ask—or Agent Groom ask Agent Armenta if everything was all right, and he said yes, that it had been set up.

Q All right, sir. Well, Lieutenant Sullivan, then you said you went to 23rd and Cutting.

A Yes.

Q Tell us how you got there and with whom you were.

A I was with Agent Groom. We drove to South 23rd, parked in a Standard station on the corner there and observed the buy take place down there.

Q Lieutenant Sullivan, tell us what you first observed when you parked in the service station at 23rd and Cutting.

[fol. 143] A I saw Frank Green walking south on 23rd Street from Virginia on the west side of the street, and Agent Armenta walking south on 23rd Street on the east side of the street.

Q I'm going to show you, for the record, People's Number 2.

MR. CURTIN: (Showing photograph to Mr. Moran)

Q (By Mr. Curtin) And I ask you, Lieutenant Sullivan, if you can show his Honor on this photograph where you observed these events from—as depicted in that photograph.

THE COURT: That's all right. You can sit down.

A I parked back in this station—

THE COURT: Do you want to see this, Mr. Moran?
That would be indicating—

THE WITNESS: I'm facing west.

THE COURT: It would be the north end of the macadam.

THE WITNESS: Yes. The station would be situated here, there's the building here, and I'm setting back here facing this driveway.

THE COURT: Facing west.

THE WITNESS: Facing west.

MR. CURTIN: And—

THE WITNESS: And—

MR. CURTIN: Go ahead, sir.

THE WITNESS: I'm sorry. Agent Armenta came South on 23rd Street right in front of me, and Frank Green would have been walking on the west side of the [fol. 144] street down here. (Indicating) He went across the street to this parking lot on the west side of the Jack Newell store. Agent Armenta went across the street, walked along the front of the store to the corner of the store and then came back to a bus stop bench right here. (Indicating)

Q (By Mr. Curtin) And then tell us what you observed next after you saw Mr. Green go to the parking lot and Mr. Armenta do as you just described.

A Agent Groom and I were sitting in the car together at this time, and when Frank Green reached the parking lot we were discussing getting—the possibility of getting a better view of the lot, and we noticed a two-story apartment house directly across the street from where we were parked. Agent Groom decided that this would probably be a better vantage point, and went to this unit on a second story porch, open porch, on that building.

Q And did you see Agent Groom do this? A Yes.

Q And from where you were sitting, could you see Mr. Green and Mr. Armenta?

A Yes.

Q And tell us then what you observed those three persons doing as you were watching them.

A Well, Agent Groom was standing on the second floor deck. Agent Armenta was standing at the bus stop with

his foot resting on the bench, and Frank Green was standing on the edge of the parking lot.

[fol. 145] Q Were there any persons around Mr. Green at this time?

A No.

Q Then tell us what occurred next.

A Within a few minutes, received a radio call from Agent Yates that a man known as Joe Cooper had left his house and was traveling toward Jack Newell's lot.

Q And Mr. Sullivan, had you had occasion to know or meet Mr. Joe Cooper before that date, the 21st of December, or to see him before that date?

A I had seen him about two weeks prior to that date.

Q And had you seen that person in a vehicle prior to the 21st of December, 1961?

A Yes.

Q Then tell us what you observed next after you received this message or communication from Agent Yates?

A This '57 Oldsmobile pulled into the Jack Newell's lot. Frank Green walked over to the car, sat in on the passenger's side in front, and was there a few minutes and walked back coming toward 23rd Street.

Q Did you recognize the car that you saw come into the lot?

A Yes, sir.

Q And how many persons did you see in the car when it came into the lot?

A One person.

Q Did you have occasion to recognize the person in that car, Lieutenant Sullivan?

[fol. 146] A It appeared to me to be Joe Cooper.

Q Then after you saw Mr. Green do as you have described, what did you observe next?

A Mr. Green walked to 23rd and north on 23rd Street. Agent Armenta followed him a short distance behind, and Agent Groom came down off the second floor deck and followed in behind Mr. Green.

Q Then tell us what you did next, Lieutenant Sullivan?

A I pulled out of the service station parking area, went north on 23rd Street to Virginia, turned right, down

about half a block and pulled into a driveway, came back to Virginia and paused there for several minutes.

Q Who was there, sir?

A I saw Frank Green turn west on Virginia, Agent Groom following him. When I saw this turn, I went on—west on Virginia and parked across from Agent Lee. And about this time Armenta came up. I was informed that the buy had gone down all right, for Agent Groom came back over to my car, and we left there.

Q Then where did you go from there, Lieutenant Sullivan?

A We made a U-turn at 22nd—south 22nd and Virginia, went east to 23rd Street, south to Portrero, and then west on Portrero to South 22nd Street, coming around to Jack Newell's parking lot from the back side or the south side.

Q And what did you see there, if anything, sir?

A As we approached there, Mr. Cooper was just pull- [fol. 147] ing out of the lot. He turned north on 22nd Street from the lot, then went east on Cutting Boulevard. I was a short distance behind. And at South 26th Mr. Cooper made a left turn going north and stopped just outside of the intersection.

Q Now, this person that you said was Mr. Cooper pulling out of the lot in this car, was this the same car and person that you had seen Mr. Green come in contact with in the parking lot?

A Yes.

Q Lieutenant Sullivan, did you see Mr. Green talk to or contact any other person other than the persons you've told us about from the time you saw Mr. Green on South 23rd, on the west side of the street and go to the lot and return to the car with Agent Lee.

A No, sir.

Q The only person you saw him contact was Joe Cooper, is that right, sir?

A That's right.

MR. CURTIN: That's all of this witness, Your Honor.

THE COURT: Cross examination, Mr. Moran.

CROSS EXAMINATION

BY MR. MORAN: Q Lieutenant Sullivan, did you make some notes recording these various events that you have described?

A No, sir, I didn't.

Q Did you dictate a report covering these various events?

A No, sir.

[fol. 148] Q Have you used any written material to refresh your recollection of these events that happened last December?

A I used the—Agent Groom's copy of the State report.

Q Would that be the typewritten form called Arrest Report and Detailed Case Report?

A Yes, sir.

Q Now, had you furnished Mr. Groom at an earlier time the results of your surveillance, what you had seen and the times and where you had gone and so forth.

A No, I wasn't—I didn't feel it was necessary.

Q Now, in looking over this case report—When did you do that, by the way?

A I looked at it yesterday.

Q Did you find anything reflected in there as having been reported by you.

A Whether this is a semantic thing—"Reported," if it includes discussing the case, this would be true.

Q Well, is there anything in the detailed case report which quotes you as having reported certain facts?

A Not quoting me, no.

Q Well, does it outline or state in any way what you saw on this 21st day of December.

A May I see the report, please.

Q Surely. (Handing)

A (Examining) This reports in a general way the facts regarding that incident.

[fol. 149] Q All right. But it doesn't purport to state—Well, I'll withdraw that.

On page five of the detailed case report there is a portion which is described as testimony of witnesses, is there not?

A That's right.

Q And in it, it summarizes what these various witnesses can testify to. Agent Groom, Agent Armenta, Agent Lee, Officer Stumpf, and Agent Yates, Officer Leuker, Richmond criminologist Reeves. Isn't that correct?

A That's right.

Q Now, there's nothing in that summary as to what you personally could testify to.

A No, there isn't.

Q Nor does there appear to be such a summary for your testimony in any other portion of the report.

A (Examining report). Details of the case here—
(Handing)

MR. CURTIN: For the record, could we have the page number?

MR. MORAN: Page three, details of case.

MR. CURTIN: Thank you.

Q (By Mr. Moran) Now, you don't claim to be familiar personally with all of the facts set forth in details of case, do you?

A (No response)

Q Well, for instance—

[fol. 150] A I—I certainly can't testify to something that I didn't see or be involved in myself.

Q Now, for instance, you don't know what Officer Stumpf and Agent Yates were doing down on South 20th Street, for instance.

A I know why—

THE COURT: Personally.

Q (By Mr. Moran) Personal knowledge.

A I have no personal knowledge. I don't know.

Q You don't know what Agent Groom observed as he stood up on this porch from your personal knowledge.

A No, sir.

Q You don't know what Agent Armenta observed from standing in front of—by the bus stop, do you?

A No.

Q You were driving a Richmond Police car, were you?

A No, sir.

Q Whatever car it was, you were driving it.

A That's right.

Q And was it a car assigned to Agent Groom?

A Assigned to Agent Groom, yes, sir.

Q And you mentioned going to 11th and Nevin, and you observed a phone call being made. Now, present at that time, in that immediate area, were you and Groom, Armenta and Green, and Yates and somebody else—Yates and Stumpf?

A No, Yates and Stumpf weren't there.

[fol. 151] Q I see. They were not in that area.

A (Shaking head)

Q All right.

THE COURT: Your answer was no?

THE WITNESS: Yes, sir.

THE COURT: Don't shake your head.

THE WITNESS: I'm sorry.

Q (By Mr. Moran) After Green went over to the— And I'm jumping. I'm sorry.

Going back to the surveillance or cover at 23rd and Cutting and in that area, after Green got to the parking lot, Mr. Groom then left and walked over to the apartment house porch, did he not?

A That's right.

Q And that's on—that's an apartment house that faces on the next street, 22nd.

A No, sir.

Q What does it face on?

A The part I am looking at, the large side of the building, faces south—faces Cutting, and I don't know what address it would run on.

Q I see. You didn't have occasion to go around and check on 22nd Street to see—

A Not for an address.

Q And was your car, as it was parked in the service station, about in a line with the—let's say the southerly [fol. 152] boundary of that apartment house where Agent Groom was standing?

A No, sir. It's—

Q Would it be south of that or north of it?

A As I recall, it was a short distance south.

Q About how far?

A Well, anything I'd say would be an estimate. The lines drawn parallel might be thirty-five or forty feet.

Q But you essentially, as you looked west you could see Groom.

A Yes, sir.

Q Up on the porch. Now then, you observed Green toward the front end of the parking lot and Armenta nearby.

A Yes, sir.

Q And then when—Let me see the picture—

MR. MORAN: Here it is here.

Q (By Mr. Moran) Showing you People's Exhibit Number 2, about where was Mr. Armenta in this photograph?

A In this picture there's a man standing right at the end of this bus stop bench. Mr. Armenta spent most of his time right here.

Q Right near that bus stop bench. A Yes.

Q And where was Mr. Green?

A Mr. Green would have been in this vicinity right here.

THE COURT: Right at the end of the store.

THE WITNESS: Right at the end of the store.

Q (By Mr. Moran) And right near the sidewalk bordering Cutting—This is Cutting?

A This is Cutting Boulevard, yes. It's some area close to the sidewalk, yes, sir.

Q Within five or six feet. Is that correct?

A I wouldn't pin it to five or six feet. It's a very, very short distance.

Q May I make a mark here. See that little circle? Is that generally the point you indicated?

A It was generally in this vicinity.

Q The point I circled.

A In this vicinity right from here.

THE COURT: Suppose you draw a line over, Mr. Moran, and mark that S-1 so the record will show.

A You realize the perspective here. We're talking about the flat area.

Q (By Mr. Moran) Yes. I'm not trying to—

A In my line of site here, he would be generally in that vicinity.

Q And did he remain generally in that vicinity?

A Generally in that vicinity.

Q And when the defendant parked, did he park generally in that vicinity?

A No, sir.

Q Where did he park?

A He parked a short distance west in the same lot we're talking about.

[fol. 154] Q I see. Would that be in that area where the cars are facing the street?

A Might be somewhere in this area here. (Indicating)

THE COURT: Keep your voice up.

THE WITNESS: Excuse me.

A It would be somewhere in this vicinity right here. (Marking) It would be west of—

MR. MORAN: May that be marked—

A There are two—I think two lines of parking spaces marked there and this would be in the vicinity of the end of the second line south of the sidewalk area. This lot is marked. That would be at the western extremity of the middle parking areas.

Q (By Mr. Moran) The western extremity over toward 22nd Street.

A Yes, sir.

Q I see.

A It's rather difficult with this picture to get the proper perspective.

MR. MORAN: (Marking)

THE COURT: S-2.

Q (By Mr. Moran) Now, the first line of parked cars I think that you mentioned would be the ones closest to Cutting. You said there were two lines. One line was close to Cutting—

A I didn't say there were two lines of parked cars. [fol. 155] I'm talking about parking places.

Q Parking places. I see. And the second line of parking places would be immediately behind that.

A Yes, sir.

Q Now, the parking places nearest to Cutting, are they—at right angles to Cutting or are they angled in some other manner?

A They are angled. As I recall they angle toward 23rd Street.

Q I see. And—

THE COURT: This is not a herring bone type thing where you have two parking against each other.

THE WITNESS: As I recall, they are a herring bone type parking area. However, at this time, whether Mr. Cooper parked in a stall, I don't know. There were no other cars to confuse the issue at that time.

Q (By Mr. Moran) No other cars in the parking lot at all.

A Oh, no, there were other cars there, but as I say, this was open to view for me and—

Q You had an open view of it. A Yes, sir.

Q And what part of the car was facing you as you observed it from the service station? The front, rear, the left side or right side?

A It would be slightly angled toward 23rd Street, side view of the car. It would be about—

Q Well, what side?

A It would be the right-hand side from the driver.

[fol. 156] Q The passenger side that would be. A Yes, sir.

Q So when Green got into the car, you could see him get in on the passenger side?

A That's right.

Q Did he close the door?

A I don't think he did. I don't know whether the door—

Q He sat there I think you mentioned for a couple minutes.

A Yes, sir.

Q Was the door open?

A I'm not positive whether the door was closed or open at this time.

Q And how long did he sit there, about?

A I'd estimate a couple minutes. This would be purely an estimation of the time.

Q How far were you from this car you've described as Cooper's, from your vantage point?

A In my estimation it would be a hundred seventy-five to two hundred feet.

THE COURT: I think we'll take our noon recess, gentlemen. We'll take recess until 1:30 this afternoon.

(Noon recess taken)

[fol. 157]

AFTERNOON SESSION

1:30 o'clock p.m.

THE COURT: Let the record show that the defendant is present in court with his counsel.

Mr. Sullivan, will you resume the stand.

(Witness resumed stand)

THE COURT: Proceed, Mr. Moran.

MR. MORAN: Would you read the last question and answer, please, Mr. Reporter.

(Record read by Reporter)

Q (By Mr. Moran) You've never measured that distance.

A Never have, sir.

Q Now, Mr. Groom, from his vantage point on this porch was almost directly north of where Green was in the parking lot, isn't that true?

A I believe it would be approximately due north.

Q Whereas you and your—from where you were parked in your automobile at the service station over to where Mr. Groom was on the porch would be some two hundred, two hundred fifty feet, would it not?

A Probably that distance.

Q So it would appear, in any event, that so far as feet is concerned, Mr. Groom was closer to Mr. Green while he was in the parking lot than you were.

A I can't say exactly what distances are there, but I had the feeling it was roughly a triangle situation. I couldn't estimate his distance in comparison to mine too [fol. 158] well.

Q All right. I believe you mentioned, too, seeing Mr. Cooper on some prior occasion.

A Yes, sir.

Q And how long before the 21st of December was that?

A Approximately two weeks.

Q And do you have any notes or records concerning the details of this occasion when you saw him?

A No, I don't.

Q That was the first time you had seen him.

A Yes, sir.

Q Where was that, generally? What area?

A This was on Macdonald Avenue in Richmond.

Q Were you with Mr. Groom and Mr. Armenta?

A I don't believe I was.

Q Were you in your car? A Yes, sir.

Q Was Cooper in a car? A Yes, sir.

Q Were the cars moving?

A I was parked and he was moving.

Q Was it at night? A It was in the evening, yes, sir.

Q And what direction was your car parked? Or what direction was it facing as it was parked?

A At the time I saw him?

Q Yes.

A I was facing west on Macdonald Avenue.

[fol. 159] Q And in what direction was Cooper's car proceeding?

A He drove by me going west and then drove again going east.

Q The same evening? A The same evening.

Q Was he wearing a hat or a cap? A No, sir.

Q Was he wearing a hat or a cap on the day you saw him on December 21st?

A No, sir.

Q Did you see him immediately after he was arrested?

A No, sir.

Q Have you seen him any time after December 21st?

A I saw him the next day, I believe.

Q Did you notice that on his property list that a hat was listed?

A No, sir, I didn't.

Q Now, Mr. Groom didn't feel that the vantage point from the automobile at the Standard station was a very good vantage point, did he?

A This is a matter of opinion.

Q Yes. At least, he expressed that as his opinion, did he not?

A No, not to me.

Q I see. Didn't you tell us that while you were sitting there in the car you had a discussion and that he felt that it was important that he get to a higher elevation in order to have a better vantage point?

A He expressed the opinion that the—this other van-[fol. 160] tage point would be a good vantage point to cover from.

Q And not better.

A I don't remember him saying it was better.

Q You continued to sit in this car at the service station all of the time that Green was in the parking lot.

A Yes, sir.

Q And from the sitting position your eye level would be below the roof level of your car, of course.

A Certainly.

Q And it would be below the roof level of the cars going by on the street and in the parking lot of the market, would it not?

A Yes, sir.

Q Any cars that would pass between you and Green would cut him off of your view, would they not?

A Momentarily, yes sir.

Q And any cars that were parked between you and where this car you've described as Cooper's car, that would cut off your view, would it not?

A Parked in certain areas the possibly could, yes.

Q Did you ever make a note or a record showing that your view of Green was continuously unobstructed during the time that you were parked in the service station?

A No, sir, I didn't.

Q Did you ever tell that to Agent Groom, that your view was completely unobstructed all of the time that [fol. 161] Green was over in the parking lot.

A Did I tell him that it was always completely unobstructed.

Q Yes.

A I said that I saw Green at all times when he was in this lot.

Q At all times. A Yes.

Q All right. Did you make a note of the license number of this Oldsmobile automobile?

A No, sir.

Q Do you know how many Oldsmobile of that type and color there are in Richmond.

A I have no idea, sir.

Q Now, you testified, Lieutenant Sullivan, that when Green contacted the defendant, he approached the defendant's car on the right side, opened the door and got in the passenger's seat.

A Yes, sir.

Q Isn't that true? And that he sat there for a couple of minutes.

A That's right.

Q It was your recollection you were a little unsure, but you thought the door was closed.

A I—I believe I said that I wasn't sure whether it was closed or not.

Q All right. Were you aware that Agent Groom testified that Mr. Green never got in this car of Cooper's, [fol. 162] and that he stood not at the right side but at the left side immediately next to the driver's seat?

A You mean am I aware now or was I aware at the time I testified?

Q Are you aware now.

A I'm aware now, yes.

MR. MORAN: That's all.

THE COURT: Any redirect, Mr. Curtin?

MR. CURTIN: No redirect of this witness, Your Honor.

THE COURT: All right, you may step down.

MR. CURTIN: We'll call Mrs. Gulley.

LEONA GULLEY,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE COURT: What is your full name, please?

THE WITNESS: Leona Gulley.

THE COURT: Would you just take the witness chair, Mrs. Gulley, please. Is that G-u-l-l-e-y?

THE WITNESS: Right.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. CURTIN: Q And for the record, Mrs. Gulley, what is your address, please?

A 536 South 20th, Richmond.

Q And that's in the County of Contra Costa, State of California?

[fol. 163] A Right.

Q And do you know the defendant in this matter, Mr. Joe Cooper?

A Yes.

Q And is he present here in court? A He is.

Q Will you point him out to his Honor?

A Over there. (Indicating)

MR. CURTIN: May the record show the witness has identified the defendant, Your Honor.

THE COURT: Yes, it may.

Q (By Mr. Curtin) Mrs. Gulley, is Mr. Cooper related to you in any way?

A Yes.

Q Will you tell his Honor, the Court, what the relationship is?

A He's my nephew.

Q And Mrs. Gulley, did you know where Mr. Cooper lived on or about the 21st of December, 1961?

A Yes. He lived at my house.

Q And about how long did he live there at your house?

A Let me see—I can't think—I think he got out—let me see—April or May, one. He'd been living there since '61, ever since.

Q April or May of 1961? A I think so.

Q Until the 21st of December, 1961. A Yes, uh-huh.

Q Do you have a telephone at your house? A Yes.
[fol. 164] Q What is the number of your telephone?

A Beacon 2-1879.

Q And did Mr. Cooper have an automobile while living at your house?

A No, he didn't have an automobile, no.

Q Did he drive a car?

A Yes, he drove mine some and he drove this other one some.

Q And what cars did he drive, Mrs. Gulley?

A I let him drove mine when it was something wrong with it. I had him help me fix mine, so he drove mine then, some. And he drove Charles Barber's some.

Q Charles Barber's car? A Yes.

Q What kind of a car was that, Mrs. Gulley?

A Oldsmobile.

Q And what year?

A I think it's a '58, I reckon—'57 or something—'56 or something. I don't know. I can't recall.

Q Is that a 1957 Oldsmobile?

A I can't recall. I'm afraid to say what model.

Q And what color was that car?

A Oh—It was a blue or green or something—pale color. I just know it when I see it.

Q Could it have been a light blue, Mrs. Gulley?

A I don't know whether you call that a light blue or what.

MR. CURTIN: That's all of this witness, Your Honor.

[fol. 165]

CROSS EXAMINATION

BY MR. MORAN: Q It was a light color, in any event.

A Yes, it was a light color, but I don't know exactly what color.

Q Now, the residence at this address is owned by you, is it not?

A Yes, uh-huh.

Q And the phone number is listed in your name.

A Right.

Q Not listed in Mr. Cooper's.

A No, it's been in my name ever since 1948.

MR. MORAN: That's all that I have. Thank you.

MR. CURTIN: Just one on redirect.

REDIRECT EXAMINATION

BY MR. CURTIN: Q Mrs. Gulley, on that phone number, have you had occasions to take messages for Mr. Cooper while he was living there?

A No, I never taken a message for Mr. Cooper.

Q Did you answer the phone and call him to the phone?

A Yes, I have answered the phone and I have told him. But it would be girls.

Q And he would be called to the phone.

A Yes, his girl would call him.

Q Was one of his girls Edna Faye Carr?

A Sometimes she would talk to him. Because she didn't have no phone.

[fol. 166] MR. CURTIN: That's all, Your Honor.

The witness may be excused?

MR. MORAN: I don't intend to call Mrs. Gulley. And if she would like, I would have no objection to her sitting in the courtroom.

MR. CURTIN: I have nothing further.

MR. MORAN: With her friend. You didn't subpoena—

MR. CURTIN: I subpoenaed her, but I have no objection if she wishes to—

MR. MORAN: If you wish to sit in here as a spectator with your friend—

THE WITNESS: Thank you.

MR. CURTIN: On reflection, Your Honor, on the basis that there might be possible rebuttal for calling Mrs. Gulley, I would ask that she continue to be excluded from the courtroom.

THE COURT: All right.

Mrs. Gulley, you will have to remain outside the courtroom unless you're called back. I'm sorry.

MR. CURTIN: However, the People do not request that she remain present; if we would need her, Your Honor we can subpoena her by sending a subpoena. So if she doesn't wish to remain, she—

THE COURT: Well, suppose—She's left the courtroom. You can tell her that she can leave, if you want.

[fol. 167] Call your next witness.

MR. CURTIN: We'll call Mr. Lee.

JOHN LEE,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please?

THE WITNESS: John Lee. That's L-e-e.

THE COURT: Just take the witness chair, Mr. Lee.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Lee, what is your business or occupation?

A United States Treasury Agent, Bureau of Narcotics.

Q And your address, for the record, please?

A 144 Federal Office Building, San Francisco, California.

Q And Mr. Lee, were you so engaged and so employed on December 21st, 1961?

A I was, sir.

Q And Mr. Lee, did you have occasion to be in the Richmond area in the City of Richmond, the County of Contra Costa, on that date?

A Yes, sir, I was.

Q And will you tell us, Mr. Lee, who you were with on that day?

A Agent Yates of our bureau, Agent Groom, Agent Armenta, of the State Bureau of Narcotics, and Officers of the Richmond Police Department.

[fol. 168] Q And was there some other person present with those officers that you have just mentioned?

A Yes, sir, there was.

Q And who was that, sir?

A A person by the name of Frank Green.

Q And where was that that he was in your presence?

A In the vice room of the Richmond Police Department.

Q And what did you observe there that was done in regards to Mr. Green, if anything, sir?

A Mr. Green was searched by Agent Groom. The search consisted of searching his pockets, on the belt—the waistline, the cuffs of the pants. And I believe that was about it.

Q And then after this was done, sir, tell us what happened next, what you did next?

A Agent Armenta of the State Bureau of Narcotics and myself, in company with Mr. Green, got in a 1959 green Mercury, which is a government vehicle, and drove to the vicinity of Nevin Street between 11th and 12th Streets in the City of Richmond.

Q And what did you observe there, sir?

A I parked the government vehicle on Nevin Street, at which time Agent Armenta and Mr. Green got out of the government vehicle onto the sidewalk.

Q And then tell us what you observed next, Mr. Lee?

A Then Agent Armenta and Mr. Green went to a public telephone booth.

[fol. 169] Q And what did you see there, if anything, sir?

A It appeared to me that Mr. Green was placing a telephone call.

Q And was—Did you see anyone else with him?

A Yes, Agent Armenta was there.

Q Did you observe anything else at this time, sir?

A I believe Agent Groom, with one of the detectives from the Richmond Police Department, parked directly across the street from where I was parked.

Q Then after you observed these things, tell us what you observed next, sir.

A Agent Armenta and Mr. Green then returned to where I was parked and entered the car, at which time we followed Agent Groom out to the vicinity of 23rd and Virginia Street in the City of Richmond.

Q And then tell us what happened there, sir?

A On 23rd, as we were approaching Virginia Street, I pulled over to the curb, and Mr. Green was told to get out on the sidewalk. And keeping him in view, I went to Virginia Street, made a right turn into Virginia Street, at which time Agent Armenta got out of the government vehicle.

Q And then tell us what you observed next or what you did next.

A I then parked the government vehicle on Virginia Street between 22nd and 23rd Streets and waited there.

Q And Mr. Lee, then tell us what happened next after that?

[fol. 170] A Then we left at 1:00—I believe approximately 1:05 p.m. I observed Mr. Green coming around the corner from 23rd onto Virginia Street and got into the government vehicle in the back seat.

Q Did you observe any other persons at this time?

A At that particular time? No, sir.

Q And then following that, tell us what happened next?

A At that time I asked Mr. Green if he had the stuff, at which time he said yes and he handed me a brown paper packet.

Q And I will show you, for the record, People's Number 4, and ask you, sir, if you can identify any of those objects for his Honor, the Court.

A Yes, sir, I can.

Q Will you tell his Honor what you can identify and how you are identifying it, sir.

A This brown paper which is part of, I believe, a paper sack, was the brown object that I testified that Mr. Green handed to me. Contained—or wrapped around the brown paper were the two white with blue rule paper bindles. I can identify the three objects here by my initials JYL and the date, 12/21/61, on all three objects.

MR. CURTIN: And for the record, Your Honor, the witness is testifying as to the smaller piece of brown paper and not to the larger piece.

THE COURT: Yes.

Q (By Mr. Curtin) Now, sir, how long have you [fol. 171] been a member of the Federal Bureau of Narcotics, Mr. Lee?

A A little over four years.

Q And when you received those paper bindles, what did they appear to you to be?

A I opened one of the white paper bindles, and in it were contained a white powdery substance.

Q Mr. Lee, the bindles that you are testifying that you identified there, and that you put your initials on, are they ordinarily the type of containers in which narcotics are put and transported by persons?

A Yes, sir, it is.

Q And from what you observed, are they ordinarily wrapped in that manner, as you are holding there in your hand.

A Are you talking about the two white bindles?

Q Yes, the two white paper bindles.

A Yes, sir, it is.

Q And after Mr. Green returned and handed these to you, then tell his Honor what happened next.

A Then approximately thirty seconds later I observed Agent Armenta of the State Bureau of Narcotics come around the corner from 23rd Street onto Virginia Street. Then he also got in the government vehicle. Then at that time Mr. Armenta, myself, and Mr. Green, then returned to the office of the vice squad of the Richmond Police Department.

Q Did you see any other persons prior to returning to the police department as you have so told us?

[fol. 172] A The only other person I believe I saw at that time was Agent Groom.

Q And where was he, sir?

A I believe he was at the intersection of 23rd and Virginia Street.

Q And what was he doing? Was he in a vehicle?

A When I first saw him he was standing there. Then he got in a vehicle.

Q Did you see who else was in the vehicle with Agent Groom, if anyone?

A No, sir, I didn't.

Q Then when you returned to the police department, tell us what you did there, Mr. Lee.

A I maintained custody of the evidence until such time as Agent Groom returned to the vice squad office, at which time I handed the brown paper with the two white paper bindles in it to Agent Groom.

Q And you delivered it to him, then, up in the Hall of Justice, sir?

A Yes, sir.

Q Approximately how long was this after you had obtained them on Virginia Street in the City of Richmond?

A I believe that was approximately at 1:30 p.m.

Q Now, Mr. Lee, did you have occasion to see or meet the defendant in this matter, Joe Cooper?

A Yes, sir, I did.

[fol. 173] Q And can you tell us when that was, sir?

A That was on the same date, the 21st of December, 1961, at the intersection of 7th and Macdonald Street in the City of Richmond, approximately at 3:45 p.m.

Q And will you tell us where you were when you saw him there, sir?

A I'm not too familiar as to the directions in the City of Richmond. I was standing at the intersection of 7th and Macdonald Street on the opposite side—that would be on the—I believe the west side.

Q And then tell us what you observed there, Mr. Lee.

A Approximately at 3:45 p.m., I observed Mr. Cooper in the company of a female and two children walking on Macdonald Street toward 7th, cross the street and approach, I believe, a 1957 blue Oldsmobile.

Q And then tell us what you saw next, sir?

A At that time I observed Agent Groom and Agent Yates both come out of the—out of a store which is located right at that intersection. I believe Agent Groom came out of one door and Agent Yates came out another door. Then both of them approached Defendant Cooper.

Q Then what happened next, sir, that you observed.

A About that time I also crossed the street, and when I reached the area where Mr. Cooper, Agent Groom and Agent Yates were at, they all three were facing toward the car. And I heard Mr. Cooper say, "It's under the [fol. 174] sun visor." And Agent Yates asked him, "What's under the sun visor?" He stated, "Marijuana." About that time he was bending over looking into the vehicle pointing with—I believe it was his right hand. Then all of a sudden I believe Agent Groom had his hands on the Defendant Cooper's left hand, and all I could see at that time was both the defendant's hand with Agent Groom's hand going toward the mouth.

Q Did you hear anything after that, sir?

A Yes, I heard Agent Groom yelling to let go of his finger.

Q And tell us what you observed next after hearing that.

A At that time—I got his right hand back with the assistance of one of the police officers whose name I don't recall at this time. Then I believe Agent Yates got the defendant's left hand, at which time the handcuffs were placed on the defendant's hands.

Q Did you have occasion to observe Agent Groom?

A Yes. I believe it was anywhere from fifteen to twenty seconds Agent Groom was telling the defendant to let go of his finger.

Q And did you see his finger after this time, sir?

A Yes, sir, I did.

Q What did you observe about it that was unusual, if anything?

A The skin was torn and it was bleeding.

THE COURT: For the record, sir, again, as I understand it you have placed your initials on the two bindles and on the small brown paper.

[fol. 175] THE WITNESS: Yes, sir, I did.

MR. CURTIN: That's all with this witness, Your Honor.

CROSS EXAMINATION

BY MR. MORAN: Q Mr. Lee, have you described all of your activities at the time this arrest took place?

A Yes, sir.

Q Did you find it was necessary to take some other measures to subdue this Mr. Cooper?

A All I did was have his right hand in the back of him.

Q All you did. A Yes, sir.

Q You know what a Judo chop is?

A I believe I do, yes, sir.

Q Did you administer any of those to the back of his person?

A No, sir, I did not.

Q Did anybody else in your presence?

A In my presence, if anyone did I did not see it, sir.

Q Now, I believe you mentioned that Mr. Cooper was pointing up at this visor with his right hand.

A Yes, sir.

Q At that time nobody had ahold of his right hand.

A Not to my knowledge, no, sir.

Q I believe you mentioned that the search of Green consisted of looking in his pockets? What were they, turned inside out?

A Yes, sir.

Q Did he have a coat on? A I believe he did.
[fol. 176] Q He had a hat on?

A He had a cap type hat.

Q All right. And how about the pockets of his shirt? Somebody looked at those?

A I think Agent Groom did.

Q Groom had everything to do with this search, I mean, nobody else did.

A That's right.

Q Did he remove the man's clothes, Mr. Green's clothes?

A You mean strip him?

Q Yes. A No, sir, he did not.

Q Well, did he have him remove his shirt?

A No, sir.

Q Did he have him remove his trousers? A No, sir.

Q His shoes? A No, sir.

Q His socks? A No, sir.

Q He checked, you say, around the beltline.

A His waistline.

Q I'm sorry. A His waistline.

Q Waistline. How did he do that? What did that consist of?

A Just sticking his thumbs in and going around.

Q I see. And then he looked in the cuff of his trousers.

A Yes, sir.

Q Now, is that the extent of it?

A That's about it, sir.

Q Now, is there some test—When you handed this [fol. 177] over to Mr. Groom, these bindles, was there some, let's say, preliminary examination that you and Mr. Groom made of it? A light test, is it, or—

A No. Mr. Groom made a Mockey reagent test in my presence.

Q What kind of a test?

A Mockey reagent.

Q How do you make that test?

A It comes in a little vial which right in the center has a striation that you can break in half. And in there is a solution of acid. I believe—I'm not positive, but I believe it's nitric acid. But putting any substance that is a derivative of opium, the color will change to a purplish color.

Q And that's what happened with this—

A Yes, sir.

Q Now, you say this is a white powdery substance.

A You mean the powder that was—

Q The bindles. A Yes, sir.

Q People's Exhibit Number 4. A Yes, sir.

Q And you formed an opinion at least at the time they were turned over to you by Mr. Green and while you were still at 22nd and Virginia, that this was in all likelihood heroin.

A In my opinion, yes, sir.

Q And you gave a signal indicating that to Mr. Groom, a signal of some kind, did you not, that you had scored two bindles or you had gotten two bindles, or something?

[fol. 178] A I'm not too positive—To the best of my recollection, I think after Agent Groom got in his vehicle he drove up to where we were parked and at that time I believe I told him that we did have the two bindles.

Q By that time you had looked at it and seen that it was a white powdery substance.

A Yes, sir.

Q You're sure about it being white. A Yes, sir.

Q You made some report? You have some notes concerning your activities in this case?

A No, sir, I do not.

Q You don't have any? You didn't make any?

A No, sir, I did not.

Q Never at any time. A No, sir.

Q When you got through with your investigation on this matter, you didn't dictate a report.

A Dictate to a secretary, you mean, sir?

Q I don't care whether you dictate to a secretary or to a machine. You know what I'm talking about when I say dictation?

A The only information I relayed was to Agent Groom as to the time and place, as to what had happened.

Q Well, where did you do that?

A At the Vice office at the Richmond Police Department.

Q And who did you relay that to? A Agent Groom.

Q You made no separate record for the Bureau of Narcotics?

[fol. 179] A No, sir, I did not.

Q That is, of the Federal Bureau of Narcotics.

A No, sir, I did not.

Q Actually, what you found in this package was a brown powdery substance, was it not?

A No, sir, it was a white powdery substance.

Q You recall testifying before the Grand Jury of this county in January of this year.

A Yes, sir, I did.

Q And I'll refer you to page 23, starting with line 12, and going down to line 30, and ask you if you will read that to yourself. (Handing)

A (Examining)

Q I'll ask you, Mr. Lee, if it's not correct that you were asked these questions and gave these answers on that occasion:

QUESTION: Will you tell us what you received from Mr. Green that you observed.

ANSWER: I received two paper bindles, I believe, at the time—I believe at that time it was wrapped in a brown paper which apparently was torn from a brown paper package that you receive when you go to a grocery store.

QUESTION: And did you examine the contents of the bindles, sir?

ANSWER: No. Not at that time, no, sir.

QUESTION: Did you do so at a later time?

ANSWER: Yes, sir.

[fol. 180] **QUESTION:** What did it appear to be?

ANSWER: It appeared to be a brown powdery substance.

QUESTION: Mr. Lee, what did you do with the two bindles that you received from Mr. Green?

"ANSWER: I placed my initials JYL on both the bindles and also on the brown wrapping paper, and at that time I turned the two paper bindles and also the brown paper over to State Agent Howard Groom."

Do you recall being asked those questions and giving those answers?

Yes. If I stated brown powdery substance at that time, then I made a mistake.

Q Well, it was fresher in your mind then than it is now, wasn't it, sir?

A Yes.

Q This was less than a month after the occurrence?

A I believe it was.

MR. MORAN: That's all.

MR. CURTIN: Nothing further.

THE COURT: The witness may be excused?

MR. CURTIN: This witness, Your Honor, may be excused.

Mr. Reeves.

MR. MORAN: Oh pardon me. I did have something else of Mr. Lee. I wonder—

THE COURT: Just a minute, Mr. Lee. Would you [fol. 181] return to the witness stand, please.

(Witness resumed stand)

Q (By Mr. Moran) Mr. Lee, after the arrest of Mr. Cooper, and taking him out to the Richmond Police Department, you made a search of his person, did you?

A I did not take Mr. Cooper to the Richmond Police Department.

Q Well, that wasn't my question. I said after you saw him up at the Richmond Police Department after his arrest, did you search him?

A No, sir, I did not.

Q Did you see him searched? A No, sir, I did not.

Q Did you see some money that was taken from his pockets?

A I don't recall seeing any money, no, sir.

Q Don't you recall, Mr. Lee, that you checked the serial numbers of certain bills, a list of bills that were in

your possession against serial numbers of money that he had in his possession, that Cooper had?

A I don't believe I had the list of the money.

Q Who had the list?

A I'm not sure who had the possession of the list.

Q You didn't observe this being done?

A I do not recall it, sir.

Q Mr. Lee, do you recall that sometime that afternoon you ascertained that the marked money furnished by Mr. Groom was not in the defendant's possession?

A I believe that was done later, because I don't— [fol. 182] After the arrest of Cooper, I did not see Agent Groom, because I took him to the emergency hospital and that was the last time I saw Agent Groom.

Q Well, you told us a minute ago that you gave him the bindles that afternoon at the Richmond Police Department.

A I gave him the bindles at 1:30 p.m. that afternoon. But after the arrest of Cooper, Agent Groom was not present at the police department.

Q All right. But you were present at the police department after Cooper was arrested, were you not?

A Yes, I was.

Q Do you recall telling Mr. Cooper at that time that you were finished with the case and that he was to be released as far as you were concerned?

A No, sir, I did not.

Q Did Mr. Yates tell him that?

A I think you better ask Mr. Yates.

Q Well, were you there?

A I was there part of the time, yes.

Q And you didn't hear Mr. Yates tell him that?

A No, sir.

Q Isn't it true, Mr. Lee, that you decided the moment that no money could be found in his possession, none of the marked money, that your case was closed, and that you told Cooper that you were through with him, that he could go.

A That is not true.

[fol. 183] Q Do you have any record made by you as to what was said that afternoon to Mr. Cooper after his arrest?

A No, sir, I do not.

Q Who all was present in the room back up at the police station after Cooper was arrested that afternoon?

A There was Agent Yates and the police officers and myself and I believe Agent Armenta of the State Bureau of Narcotics.

Q One of the police officers was Sergeant Billingsley.

A I believe it was, yes.

Q Do you remember any others from the Richmond Police Department?

A There was one other officer there which I don't recall his name. I believe he's outside now.

Q Isn't it true that at that time, and as soon they found that this marked money was not in the possession of Mr. Cooper, that all of the officers present, with the exception of Sergeant Billingsley, said, "Turn him loose; we don't have a case."

A No, sir, that's not true.

Q And isn't it true that at that same time Billingsley, Sergeant Billingsley, said, "I'm going to hold him as a parole violator."

A No, sir, I don't recollect that.

Q You don't recollect that. A No, sir.

Q Do you recollect that that's wrong or was not said?

A Well, if he made that statement, I don't recollect.

[fol. 184] Q Anyway, you left. A Yes.

Q Shortly after they checked the money. Did you not?

A Yes, sir.

Q And Yates left.

A I don't know what time he left. I left before he did.

Q Yates didn't go with you. A No, sir.

Q When you left, though, all the other officers were still there.

A I believe they were, sir.

MR. MORAN: That's all.

MR. CURTIN: Nothing further.

THE COURT: The witness may be excused now, gentlemen?

MR. CURTIN: Yes.

MR. MORAN: I wonder, while we're waiting for Reeves, if we could get some measurements from Mr. Groom, if he was able to get any.

MR. CURTIN: I have no objection.

THE COURT: Go ahead. You're already under oath.

MR. GROOM: I called the Richmond Police Department and talked to the technician Ludke, and he went down and made the measurements and called back that the measurement as you requested, from the southerly edge of the four-plex that shows in one of the People's exhibits, to the first driveway south of Cutting on 22nd, the first driveway of the Newell's parking lot, was 337 feet.

[fol. 185] MR. MORAN: Three thirty-seven.

MR. GROOM: Right.

MR. MORAN: Before Mr. Reeves comes in, may I ask one other question, and that's concerning the date of this detailed police report.

Were you able to find out the date that that—

MR. GROOM: I neglected to even check it, sir.

MR. MORAN: All right.

THE COURT: Well, what's your best recollection on when you dictated that report? From the date of the occurrence.

MR. GROOM: It would have been—

THE COURT: Two days or a week or two weeks.

MR. GROOM: It would have been either—I'm trying to recollect now. To the best of my recollection, I don't recollect. It must have been the following Monday, because that particular Friday I was involved in other work and so Monday I assume that I dictated the report.

MR. MORAN: Perhaps this will help: You recall that the photographs of your fingers, which are People's Number 6-A and 6-B, were taken on December 29th.

MR. GROOM: Yes.

MR. MORAN: At 4:05 p.m.

MR. GROOM: Yes, sir.

MR. MORAN: And you will recall, I believe, that in this report, detailed case report—and I'm referring to

[fol. 186] page 1-B—that of the exhibits attached, exhibit three was a photograph taken by the Richmond Police Department of your finger.

MR. GROOM: Yes, sir.

MR. MORAN: Would that help to establish the date?

MR. GROOM: No, sir.

MR. MORAN: But in any event, whenever it was, it was dictated or written after the photograph of your finger was taken.

MR. GROOM: Not after that photograph.

MR. MORAN: What?

MR. GROOM: Not after that photograph.

MR. MORAN: You mean another photograph taken earlier?

MR. GROOM: Yes.

MR. MORAN: Where is that one? Have you seen that?

MR. GROOM: The District Attorney has it.

MR. MORAN: While he's looking for that—

MR. CURTIN: I have that, Counsel—

MR. MORAN: On the day that Cooper was arrested, all of the papers were taken out of his glove compartment, were they not, and transported to the vice office of the Richmond Police Department?

MR. GROOM: I don't know.

MR. MORAN: You don't know.

MR. CURTIN: May the record show I am handing a photograph to Mr. Moran dated 12/22/61, with the stamp [fol. 187] on the back.

MR. MORAN: So you had two sets of photographs taken of your hand.

MR. GROOM: Yes.

MR. MORAN: The first one didn't suit you.

MR. GROOM: Didn't suit the District Attorney.

MR. MORAN: What?

MR. GROOM: Didn't suit the District Attorney.

MR. MORAN: You're not suing him for damages, I hope.

That's all.

THE COURT: Do you have any questions?

MR. CURTIN: No questions.

We'll call Mr. Reeves.

HILLARD M. REEVES,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please?

THE WITNESS: Hillard M. Reeves.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Reeves, what is your address, please, for the record?

A 2433 Downer Avenue, Richmond.

Q And what is your business or occupation, sir?

A I'm the criminalist for the Richmond Police Department, sir.

Q And Mr. Reeves, what is your training and background for that position?

[fol. 188] A I'm a graduate of the University of California in criminology; I have worked for the Richmond Police Department for a little over twelve and a half years. A little over ten and a half years of that have been in the crime lab.

Q And have you had experience in regards to narcotics, in particular heroin and marijuana?

A Yes, I have.

Q And have you had chemical training in that regard, sir?

A Yes, I have.

Q And have you testified in Superior Court as an expert in the analyzation of those two substances?

A Yes, I have.

Q Now, Mr. Reeves, were you employed as the criminalist for the Richmond Police Department on December the 22nd, 1961?

A Yes, I was.

Q Did you have occasion to see Mr. Groom, a State Agent for the Bureau of Narcotics on that day?

A Yes, I did.

Q And did he on that day have occasion to give you anything, if he did?

A Yes.

MR. CURTIN: People's Number 4, Counsel.

Q (By Mr. Curtin) I'll show you this envelope marked People's Number 4 for identification and ask you if you can identify anything that Agent Groom gave you on that day, sir? (Handing)
[fol. 189] A (Examining) Yes, I can.

Q Will you tell us what you can identify and how you can do that.

A He gave me a small piece of brown paper, apparently from a grocery bag, and wrapped in—it was wrapped around two papers of white powder. He also gave me this envelope, which contains these.

Q And where did he give you those items, sir?

A In the crime lab at the Richmond Police Department.

Q And how do you identify them, sir?

A I have my mark on them. And on the envelope I have information as to who gave the material to me.

Q And looking at the contents, sir, do you have your mark on the two white paper bindles in People's Number 4?

A Yes, I have.

Q Do you have your mark on the other pieces of paper contained in there?

A Yes, I have.

Q On two other pieces of paper, sir? A Yes.

Q And did you then mark the envelope that you hold in your hand?

A Yes, I did.

Q And that is your writing on that envelope, sir?

A Under the laboratory section, it is my writing, yes, sir.

Q Now Mr. Reeves, after receiving those items, did you open the two white paper bindles?

[fol. 190] A Yes, I did.

Q And did you have occasion to see any substance when you opened them?

A Yes, I did.

Q Did you have occasion to analyze that substance?

A Yes.

Q By chemical analyzation, sir? A Yes, sir.

Q And what did you analyze the substance in the two white paper bindles to be?

A The white powder in each of the two bindles contained heroin.

Q And that is the narcotic substance defined in the Health and Safety Code of the State of California.

A Yes, sir, it is.

Q After you analyzed those substances, sir, in the two paper bindles, what did you do with those items that Agent Groom had given to you?

A I locked them up in an evidence locker that I have in the crime lab.

Q And who has access to that locker, sir?

A Just myself, sir.

Q Did you have occasion to remove People's Number 4, the envelope and its contents from that locker?

A Yes, I did.

Q Did you have custody of those items up until today, sir, after you were handed them—after they were handed to you by Agent Groom?

[fol. 191] A Yes. Not up until today. There were two periods that they have been out of my possession: one was during the Grand Jury hearing and the other was when I gave it to you yesterday.

Q You handed it to me yesterday in open court, is that correct?

A Yes, sir.

Q Except for those occasions, then, that item, the brown Manila envelope and the object it contains have been in your custody.

A Yes, sir.

MR. CURTIN: At this time, Your Honor, we offer these in evidence as People's Exhibit Number 4.

MR. MORAN: If the Court please, I'm going to object. They were out of this officer's custody for a period and no explanation or proof has been brought in as to who handled them, what was done with them at the Grand Jury investigation.

THE COURT: Well, there's at least a presumption that they were in custody of the foreman or secretary of the Grand Jury. There is at least a presumption the clerk of this performed a duty and has kept them. The objection will be overruled.

What was that, number four?

MR. CURTIN: Number four, Your Honor.

THE COURT: All right. People's Number 4 for identification will be received in evidence and marked [fol. 192] People's Number 4 in evidence.

(Whereupon the object above referred to, having been previously marked People's Exhibit No. 4 for identification, was received in evidence.)

Q (By Mr. Curtin) Mr. Reeves, did Mr. Groom have occasion to hand you any other item at a time later than December the 21st, 1961?

A Yes, sir, he did.

Q And what was it that he handed to you at a later time, sir?

A He gave me a Bureau of Narcotics Enforcement envelope containing one seed.

MR. CURTIN: Referring, Counsel, to People's Number 7.

Q (By Mr. Curtin) I'll show you this envelope marked for identification as People's Number 7, and ask you if you can identify that. (Handing)

A (Examining) Yes, sir, I can.

MR. MORAN: May I see it for a moment? I just want to see how big the seed is. (Examining exhibit)

Thank you.

MR. CURTIN: For the record, Mr. Reeves, when was it that Mr. Groom, the State Agent, handed you the seed and the envelope about which you have just told us.

THE WITNESS: 3:30 p.m. on the 4th of April, sir.

MR. CURTIN: That's of this year?

THE WITNESS: Yes, sir.

MR. CURTIN: Where was that, sir?

[fol. 193] THE WITNESS: In the crime lab of the Richmond Police Department.

Q (By Mr. Curtin) Did you have occasion to examine the seed about which you have told us?

A Yes, I did.

Q Will you tell us what you found it to be?

A I found it to be a seed of Cannabis sativa, more commonly known as marijuana.

MR. CURTIN: Your Honor, at this time we would offer that in evidence for the probative value it has as to knowledge of the defendant and as to identity.

THE COURT: People's Number 7 for identification will be received in evidence and marked People's Number 7 in evidence.

(Whereupon the object above referred to, having been previously marked People's Exhibit No. 7 for identification, was received in evidence.)

Q (By Mr. Curtin) That last item, Mr. Reeves, did you keep it in your custody at the Richmond Police Department?

A Yes, I did.

Q Did you bring that to court with you yesterday, sir?

A Yes, I did.

Q And you handed it to me in open court. A Yes, sir.

Q It's been in your custody ever since that time.

A Yes, sir.

Q Of April the 4th. A Yes, sir.

[fol. 194] MR. CURTIN: That's all of this witness, Your Honor.

THE COURT: All right.

CROSS EXAMINATION.

BY MR. MORAN: Q Mr. Reeves, did you determine how much heroin was in the two bindles that you have described?

A No, sir, I did not.

Q There is some notation under laboratory report there. Is this one paper 1050G and—What is the meaning or significance of the 1050G?

A This is to indicate that the powder in the paper weighed—in the case of number one, 1050 grams.

Q I see.

A And the white powder in paper number two weighed 1426 grams.

Q And is that a usual or common way of indicating the amount of powders found in bindles of this type?

A The amount of powder, yes, sir.

Q And is it used by the State Bureau of Narcotics?

A Yes, sir.

Q Just using the smaller letter "g."

A I'm not sure that they use the small letter "g." They may write the word grams out.

Q It's not unusual, though, to use "g" for grams, is it?

A It's common practice. That's what I do all the time, sir.

Q Now, I take it that you did not make any determination of how much of this powder was heroin.

A No, sir, I did not.

[fol. 195] Q There is a test to determine that, is there not?

A Yes, it can be determined quantitatively.

Q Had you any reason to believe that this was not all heroin?

A No, sir.

Q Can you perform that test in your laboratory as to determining what part is heroin and what part is something else?

A Yes, sir, I could.

Q How long would it take?

A Not having had occasion to do this, I couldn't tell you, sir.

Q Where is it usually done?

A Where is it usually done?

Q Yes, in this area where would that type of test ordinarily be made?

A I've never been asked to do it, and I don't know whether the Bureau of Narcotic Enforcement Laboratory does it or not. Probably they do.

Q Where is that located?

A That's in San Francisco, sir.

Q Mr. Groom has never asked to secure these bindles in order to make such a test.

A No, sir.

Q From your study of chemistry and—as related to narcotics—would the swallowing of heroin in the amount that you have indicated here have any ill effect on a person?

MR. CURTIN: Your Honor, for the record, then, I [fol. 196] will object to this question. This is calling for medical opinion and expert testimony. And Mr. Reeves has not so qualified himself.

THE COURT: I'll permit you to ask him some questions on voir dire to find out if he is qualified.

MR. CURTIN: All right, Your Honor.

THE COURT: Do you feel qualified to answer a question of the effect of taking this orally?

THE WITNESS: No, sir, I do not.

THE COURT: Well, I guess the objection would be good.

Q (By Mr. Moran) When these various—these bindles were taken out at the time of the Grand Jury investigation, to whom did you transport them? I'm referring to People's Exhibit 4.

A To the Deputy District Attorney who was handling the hearing. I don't remember who it was now, sir.

Q And was it returned to you by the same deputy?

A It was returned to me at the hearing.

Q At the hearing itself. A Yes, sir.

Q And you testified there, did you not?

A Yes, sir, I did.

Q So it was only out of your possession for a short time.

A Yes, sir.

MR. MORAN: That's all.

REDIRECT EXAMINATION

BY MR. CURTIN: Q To refresh your memory, sir, you remember it was me that you handed it to at the [fol. 197] time of the Grand Jury hearing, if you remember.

A No, sir, I don't remember.

Q All right.

A Because there have been several hearings and different ones of you have handled it.

Q And it was returned to your custody in the presence of the Grand Jury during the hearing, is that not correct, sir?

A Yes, sir, it was.

Q And it was so ordered to be returned to you by the foreman of the Grand Jury.

A That's right.

THE COURT: Well, so the record won't show that we're all being facetious, the transcript does show that you appeared.

MR. MORAN: That was my recollection.

MR. CURTIN: Thank you.

THE COURT: The witness may be excused?

MR. CURTIN: He may be excused.

Call Mr. Stumpf.

LOUIS STUMPF

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please?

THE WITNESS: Louis Stumpf.

THE COURT: L-o-u-i-s?

THE WITNESS: Yes, sir.

[fol. 198] DIRECT EXAMINATION

BY MR. CURTIN: Q What is your address, for the record, sir?

A 164-17th Street, Richmond.

Q And Mr. Stumpf, what is your business or occupation?

A Police officer, City of Richmond.

Q That's for the City of Richmond, County of Contra

Costa—

A Yes, sir.

Q —State of California. And Mr. Stumpf, were you so employed on the 21st day of December, 1961?

A I was.

Q What division or department were you working for in the Richmond Police Department on that day, sir?

A Vice detail.

Q And did you have occasion to be with some fellow officers or other agents on that day during an investigation?

A I was.

Q With whom were you, sir?

A I was with Agent Groom, Agent Armenta from the State Bureau of Narcotics, Agent Lee, and Agent Yates of the Federal Bureau of Narcotics. And Agent Billingsley from the vice detail, and Lieutenant Sullivan.

Q At the time you were with those gentlemen, was there someone else present?

A Yes.

Q Who was that, sir? A Frank Green.

Q And after this time, sir, will you tell us what you [fol. 199] did after you saw those other officers and Mr. Frank Green.

A I was in a State car with Agent Yates, and we were parked at South 19th and Cutting.

Q Approximately what time was this on December the 21st, 1961?

A We arrived at 19th and Cutting about 12:30.

Q Was this in the afternoon, sir, of that day?

A Yes.

Q And which direction or where did you stop at that location, South 19th and Cutting?

A Just north of Cutting facing Cutting on 19th Street.

Q And had you had occasion prior to that time to see or observe the defendant in this matter, Mr. Joe Cooper?

A Prior to that date?

Q Yes. A Yes.

Q And did you know him when you saw him?

A I did.

And from where you were parked at South 19th and Cutting, what could you observe from there, sir? Just describe the area.

A It's a residential and business area through there. On the northwest corner of South 19th and Cutting is a Union service station. The other corners are vacant.

MR. CURTIN: May the record show at this time, Your Honor, I'm showing to Mr. Moran a photograph for his examination. (Handing)

[fol. 200] MR. MORAN: (Examining)

Q (By Mr. Curtin) Mr. Stumpf, I'm going to show you this photograph that defense counsel has seen and

ask you if you can tell his Honor what that scene depicts.
(Handing)

A (Examining) It shows the east side of South 19th and Cutting and the intersection of 20th and Cutting.

MR. MORAN: Intersection of 20th—

THE WITNESS: South 20th and Cutting.

Q (By Mr. Curtin) When you stationed yourself there, sir, did you—or were you able to have communication with anyone other than the persons in your vehicle?

A Yes, sir.

Q How, sir? A By radio.

Q And could you observe from where you were sitting at that location, the address 536 South 20th Street in the City of Richmond?

A Yes, sir, I could.

Q And is that house or location depicted in that photograph?

A It is.

Q And is it a fair representation of the area of South 19th and Cutting, looking to 536 South 20th in the City of Richmond?

A Yes, sir.

Q Will you hold it up and point out to his Honor where 536 South 20th is as shown in that photograph?

A (Indicating)

[fol. 201] THE COURT: Perhaps you'd better have that marked, Mr. Curtin.

MR. CURTIN: Yes, we'll offer it in evidence at this time.

THE COURT: I mean you better mark it so the record will show—

MR. CURTIN: I see.

Q (By Mr. Curtin) Would you please take a pen and mark that for his Honor, the Court, drawing a line from the house, 536 20th. And make a S-1.

MR. CURTIN: We'll offer that in evidence, Your Honor.

THE COURT: It will be received in evidence and marked People's Exhibit Number 8.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 8.)

MR. CURTIN: May the record show, Your Honor, I am showing another photograph to Mr. Moran. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Curtin) I'll show you this photograph which has just been shown to Mr. Moran and ask you to tell his Honor, the Court, what that photograph depicts.

A South 20th and Cutting? That's what it looks like.

Q Can you tell us in which— Is that in the City of Richmond, County of Contra Costa, State of California?

A Yes, sir.

Q Which direction is that photograph taken at that location?

[fol. 202] A Pointing east—southeast.

Q And is it looking toward what street, sir?

A Looking toward South 20th.

Q And can you see on that photograph the location of Newell's Market in the City of Richmond at South 23rd and Cutting?

A Yes, sir.

Q And will you point that out to his Honor and then mark it for his Honor, the Court.

THE COURT: You mean Newell's Market.

MR. CURTIN: Newell's Market, Your Honor.

THE WITNESS: (Marking)

MR. CURTIN: We'll offer that as People's Number 9.

THE COURT: It will be received in evidence and marked People's Number 9 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 9.)

Q (By Mr. Curtin). Now, Mr. Stumpf, referring back to People's Number 8, I believe you told us you were at this scene approximately 12:30 p.m. in the afternoon of December 21st, 1961.

A Yes, sir.

Q And did you have occasion to see any vehicles in or near or around 536 South 20th Street in the City of Richmond?

A Yes, sir.

Q And Mr. Stumpf, what vehicle did you observe there?

A I saw a 1957 blue Oldsmobile parked on South [fol. 203] 19th Street, headed north in front of 536—South 20th, rather.

Q It was parked on South 20th. A Yes.

Q And Mr. Stumpf, had you had occasion to ever see that car before that day in question?

A Yes, sir.

Q Had you had occasion to see a person driving that car prior to that day in question?

A Yes, sir.

Q Did you have occasion to send any message or communication regarding that vehicle after arriving on the scene there at South 19th and Cutting.

A I didn't personally.

Q Did you hear of some message being sent, sir?

A I know of no message that was sent.

Q Was there somebody with you, sir? A No.

Q In your vehicle.

A Oh, at the time you're talking about?

Q Yes. When you arrived at the scene, who did you go there with?

A Oh, Agent Yates.

Q Of the Federal Bureau of Narcotics? A Yes, sir.

Q And then after you were there and you saw the vehicle, tell us what you observed next.

A At approximately ten minutes to 1:00, we saw a person that fit the description of Mr. Cooper come out of the house and walk to the car parked in front, the '57 Oldsmobile, and he stood at the rear end of the car [fol. 204] for approximately two to three minutes, appeared to do something with the trunk, had the trunk lid up, and then he sat—went and sat in the car for about another minute, and I saw him driving north to Cutting and make a right turn on Cutting and go east, make a right turn on 22nd Street—South 22nd Street, and disappeared from view at that time.

Q After you observed this, Mr. Stumpf, what did you do?

A We radioed this information to the other cars that heard our radio.

Q And then what did you do next, sir?

A We drove onto Cutting and east on Cutting to 23rd and Cutting.

Q And where did you go there, sir?

A Made a left turn.

Q Onto what street? A Onto South 23rd.

Q And then came in what direction on South 23rd?

A Came—went north on South 23rd.

Q Who was driving your vehicle, Mr. Stumpf? A I was.

Q And who was with you, if anyone, at this time?

A Agent Yates.

Q And where was he in your car?

A The front seat, passenger's seat.

Q Did you have occasion to see this automobile at any time later that day?

A Yes, sir.

[fol. 205] Q Where was that, Mr. Stumpf?

A At 7th and Macdonald.

Q And will you tell us approximately when it was that you saw it at 7th and Macdonald later that day?

A It was about 2:15 p.m.

Q And did you observe anyone in the car?

A At the time we saw the car, no.

Q What did you do when you saw it at that location?

A We waited.

Q Can you tell his Honor approximately how long you waited?

A Until 3:30 p.m.

Q And then tell us what you observed, sir.

A At about approximately 3:30 p.m. we observed Mr. Cooper and the lady and two small children walk up to the car.

Q Then what happened then, sir?

A Mr. Cooper took a key and was unlocking—appeared to be unlocking the door. And he was approached by Agent Groom and Agent Yates.

Q What happened next, Mr. Stumpf?

A I was—I and Agent Billingsley and Agent Lee approached the car and as we approached—a scuffle had started and I and Sergeant Billingsley assisted in handcuffing Mr. Cooper at the car.

Q Could you hear anything being said at this time?

A I heard— As I approached the car, I heard Mr. Cooper say that the marijuana was under the visor in the car.

[fol. 206] Q Did you hear— A And—

Q I'm sorry, sir.

A Then the scuffling began and I heard Agent Groom telling Cooper to let go of his finger, that he was biting his finger.

Q And for the record, Mr. Stumpf, do you see Mr. Cooper present here in court?

A I do.

Q Will you point him out to his Honor.

A Sitting at the other end of the table.

MR. CURTIN: May the record show the witness has identified the defendant.

THE COURT: Yes, it may.

MR. CURTIN: That's all of this witness, Your Honor.

CROSS EXAMINATION

BY MR. MORAN: Q You've described the situation at the time of Mr. Cooper's arrest as a scuffle. I think one of the other officers called it a great to-do. Whatever it was, before the arrest was over Mr. Cooper was bleeding in and about the forehead, the nose, both lips, was he not?

A I remember seeing blood on his face, yes.

Q What caused it?

A It was my thoughts that it was the blood from Groom's finger.

Q You really thought that. A Yes.

Q Well, you found out later up at the police department that he was cut, did you not?

[fol. 207] A I don't know.

Q Didn't you go back up to the vice room?

A I was up in the vice office, yes.

Q You didn't see the cut and scratches on his face?

A I saw blood on his face.

Q And he told you and the other officers that all of his teeth had been knocked loose?

A I remember him saying his teeth were loose.

Q And he was spitting blood?

A Didn't see him spitting blood.

Q Down at the scene of the arrest.

A I didn't see any spitting going on.

Q And do you recall that one of the officers took Cooper's handkerchief out of his pocket so that he could hold it up in the area of his mouth to stop the flow of blood?

A Right after he was handcuffed, I left with Mrs. Edna Faye Carr, and had no more to do at the scene with Mr. Cooper.

Q Well now, you don't know, then, is that it?

A So I don't know what happened with Mr. Cooper.

Q You didn't see him bleeding. A No.

Q Didn't see the handkerchief put up to his mouth.

A No.

Q You didn't strike him. A No.

Q Nobody struck him in your presence. A No.

Q How many times had you seen Cooper prior to this December 21st?

[fol. 208] A Well, I remember specifically one date, the 5th of December.

Q At night, I take it?

A That was about 6:00 o'clock in the evening, yes.

Q Well, at that time of the year it's dark, is it not?

A It was—Yes, it was dark.

Q He was going by in a car, was he? A Yes.

Q That's the only time you remember seeing him?

A I had seen him on another occasion. I don't know if it was after that date or before, but that was at 6th and Macdonald.

Q At night. A At night.

Q When you first saw him on December the 21st, he was in front of his house?

A Yes.

Q And that's on— And how many blocks away were you?

A It would be one block to Cutting and then from there to South 19th it would be two blocks. It would be two blocks away.

Q Were you right at the intersection of Cutting?

A Yes.

Q And you could make him out and you could identify him two blocks away.

A He looked like Mr. Cooper, the same build— I could not identify his face at that distance. He looked— He had the same build, the same—he limped.

[fol. 209] Q You could see all that.

A I could see that much, yes, sir.

Q Two blocks away. You didn't seem quite certain as to whether—when he was standing at the back of his car whether he looked in the trunk or was doing something else. Could you see clearly what he was doing?

A No.

Q Did you make any separate record of your activity on this day, write or record or keep notes?

A As I remember, I made the arrest report.

Q For Richmond.

A For Richmoind. Also I believe I made the offense report. That's my part of the report.

MR. MORAN: I believe that's all I have.

THE COURT: Any redirect?

MR. CURTIN: Just for the record, Your Honor.

REDIRECT EXAMINATION

BY MR. CURTIN: Q May I ask you this: You said that you could identify Mr. Cooper from one thing—or among one thing was that he limped.

A Yes, sir.

Q What knowledge did you have about the fact that he limped?

A I had received information that he had been in an auto accident or had his legs broke.

Q And when you saw him on the 5th of December, '61, when he was going by in a car, tell his Honor what [fol. 210] you saw at that time. What did you observe him doing?

A On the 5th of December?

Q Yes.

A I saw him driving west on Macdonald Avenue. I was parked at— I was inside an auto at 5th and Mac-

donald. I saw him stop between 4th and 5th. I saw a person get in his car. He drove to 4th and Macdonald. He parked. And I saw the same person get out of the car, walk back to a cafe at 5th and Macdonald. In approximately five to ten minutes he walked back to Mr. Cooper's car at 4th and Macdonald. And I don't— Mr. Cooper left, but I don't remember just how he left, which way he went at that time.

Q Then Mr. Cooper on that day was in that area for some length of time, is that correct?

A That's correct.

Q And did you know the person that you saw get into the car and get out on those occasions?

A I did.

MR. CURTIN: That's all of this witness.

MR. MORAN: Pardon me just a minute.

THE COURT: Any recross—

MR. MORAN: I believe that's all. The witness may be excused.

THE COURT: You may be excused.

MR. MORAN: Mr. Stumpf, just a minute while you're going there. Is this house at 536 South 20th [fol. 211] white stucco? It appears to be in the picture.

THE WITNESS: It has brown or brickwork, as I remember, some kind, in front. It's white.

MR. CURTIN: We'll call Mr. Yates as our next witness.

THE COURT: It's 3:00 o'clock, Mr. Curtin. Suppose we take our afternoon recess.

(Recess taken)

(After recess)

THE COURT: Let the record show that the defendant is present in court with his counsel.

Call your next witness.

MR. CURTIN: Mr. Yates.

WALTER T. YATES,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name?

THE WITNESS: Walter T. Yates, Y-a-t-e-s.

THE COURT: Just take the witness chair, Mr. Yates.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Yates, what is your address, for the record, please.

A Room 144, the Federal Building, San Francisco.

Q And what is your business or occupation, sir?

A Agent, Federal Bureau of Narcotics.

Q And approximately how long have you been so employed?

[fol. 212] A Approximately two and a half years.

Q And Mr. Yates, do you recall the events of the 21st day of December, 1961?

A Yes, sir.

Q Did you have occasion to be in the City of Richmond, County of Contra Costa, on that day, sir?

A Yes, sir.

Q With whom were you on that day?

A At various times with Agent Lee, Groom, Armenta, local officers Sullivan, Billingsley and Stout.

Q And approximately what time was this, Mr. Yates, on that day?

A I believe I arrived at approximately 10:30 or 11:00 o'clock in the morning.

Q And then did you have occasion to see some other person when you were with the officers that you just named?

A Yes, sir.

Q Who was that, sir?

A Fellow by the name of Green. I don't recall his first name.

Q And did you have occasion, then, after observing this person, leave the Richmond Police Department?

A Yes, sir.

Q And for the record, you were there, is that correct, sir when you saw these people?

A Yes, sir.

Q And with whom did you go, if anyone, when you left there?

[fol. 213] A Officer Stout and I left together.

Q And approximately what time of day was this, sir?

A It was approximately 12:30.

Q And where did you and the officer that you mentioned go to?

A We went to 19th Street where we parked.

Q And near what street, sir, was that?

A Cutting—I believe it was Cutting Boulevard.

Q And is that location in the City of Richmond, County of Contra Costa?

A Yes, sir.

Q I show you People's Number 8, Mr. Yates, and ask you if you can tell us if that looks like the area where you were.

A Yes, sir, it is.

Q And who was driving the vehicle that you were in, sir?

A Officer Stout.

Q And for the record, is that Stout or Stumpf?

A Possibly Stumpf.

Q Stumpf. A I thought it was Stout.

Q And Mr. Yates, will you tell us what you did when you arrived at this area as depicted in People's Number 8?

A We parked on 19th Street facing toward Cutting Boulevard where we were able to look at an angle over to the left over toward 20th Street.

Q And did you see any vehicles over on 20th Street, sir?

A Yes, sir.

Q And is that, by the way, for the record, South 20th [fol. 214] Street in the City of Richmond?

A Yes, sir.

Q And what kind of a vehicle if any did you see over on South 20th?

A I recall, I believe, there were several vehicles; the one specifically was a blue Oldsmobile parked over there in front of one of the houses.

Q Were you watching this vehicle, sir? A Yes, sir.

Q And then tell us what you observed if anything that occurred in or near this vehicle while you were watching.

A Approximately 12:50 p.m. we observed a large male subject come out of the second house, which would be the second house south of Cutting there, and go to that blue Oldsmobile. Eventually he went to the trunk of the car and was doing something there for an estimated five or ten minutes.

Q Then tell us what you observed this person do next?

A The person then got in the vehicle—I guess that would be north. He went toward Cutting Boulevard away from the house, turned right onto Cutting, which I believe is west. I'm not too familiar with the area there. Anyway, toward 23rd Street. And then we saw him turn right and then he went out of our view.

Q Now sir, when you saw this person that you describe in the car, did you give any communication or any message to anyone, if you did so?

[fol. 215] A Yes, sir.

Q How did you do that?

A With a radio in the car. There was another radio car involved in the incident.

Q On arriving at the scene and observing this vehicle, did you give any radio message or communication?

A Yes, sir. We notified the other officers that the car in question was at the scene.

Q Then after you observed this person do as you told us, tell us what you did next.

A A short time later, a short time after we had seen the car turn right, an estimated minute or two minutes, we drove out of 19th Street onto Cutting Boulevard where we turned left—again I'm not sure of the direction; I think that's west—toward the direction that he had gone. We went down, then we looked on the right side just before getting to 23rd Street and we saw the car and the male occupant sitting in the parking lot there. There's a market there. I think it's Newell's or something to that effect.

Q Did you see any other person at that time, sir?

A Yes, sir, I saw the same person sitting in the car and the subject Green—at that time he appeared to be just leaving. He was a couple of feet and he was facing toward Cutting Boulevard, the intersection, actually, of Cutting and 23rd.

Q And then the car that you saw Green leaving, this was the same car that you had seen on South 20th, and [fol. 216] the same person that you had seen coming out of the house was in the car, is that correct, sir?

A Yes, sir.

MR. CURTIN: That's all of this witness, Your Honor.

CROSS EXAMINATION

BY MR. MORAN: Q Now, how did you ascertain that the same person that you saw come out of the house was the same person that you saw in the car at the parking lot.

A The person at 20th Street was a large person wearing—appeared to be wearing a hat and some type of coat, which I don't know if it was a short coat or a long coat. And this same person sitting in the car was a large person wearing a hat and the same type coat.

Q You didn't compare the facial features at one time, let's say coming out of the house, with those that you saw in the parking lot.

A No, sir, I don't—it's my best recollection I didn't actually—couldn't actually see the face at 20th Street.

Q But you did at 20th Street— You were some two blocks away from where this man came out of the house, as I understand you?

A It's approximately a block and a half, I believe. It would be very close to two blocks.

Q And you could see that he was a large man and had this hat on that you mentioned.

A Yes, sir.

[fol. 217] Q Is there anything else unusual about him?

A Other than being large, not that I can recall, no, sir.

Q And he walked out of the house and then walked over by the trunk of this car.

A Yes, sir.

Q You couldn't tell whether he opened it or what he was doing there.

A Well, I believe that we did— I'm not sure now. I seem to recall seeing the trunk go up, but I'm not sure. I believe he did open the trunk.

Q Did he run out of the house or walk rapidly or walk in a normal manner?

A He did not run. As I recall, it would be a fairly normal walk.

Q Had you, previous to December 21st, seen the defendant before?

A Not to my knowledge, no, sir.

Q That was 19th Street you were parked on.

A Yes, sir.

Q And that picture was taken from—from a position on 19th Street looking north. Would that be— Or looking toward Cutting.

A Yes, sir.

Q Did you go any closer to this house in your car at any time, either before or since, to this house on 20th Street that the subject came out of.

[fol. 218] A I was in the area before and I'm not sure—it seems to me like I drove past the house once, but again I'm not sure.

Q Do you remember what construction or color it was?

A Not for sure, no, sir. Seems to me it was a light color, blue or green—something—I'm not sure.

Q A light shade, in any event.

A As I recall. I'm not sure.

Q You saw the defendant later that day, did you not?

A Yes, sir.

Q You placed him under arrest, did you not?

A Yes, sir.

Q Did you know that Mr. Green was furnished with marked money?

A Yes, sir.

Q And did you make any examination of the defendant's money after his arrest to determine if the marked money was among those bills?

A I was present. I can't recall what part I played. Seems to me I was the one who actually examined the money. Perhaps I only looked at the numbers. But I was present.

Q In any event, none of the marked money was found on his person.

A No, sir, none was found.

Q Did you make any attempt to— You believed at that time that this man had received the marked money, I presume.

A Yes, sir.

Q The defendant. A Yes, sir.

[fol. 219] Q Did you make any attempt to either by questioning or in any other way, to trace this marked money?

A Not that I can recall. We asked him about money he had and he said he had some in the car, which we had brought to the station, and I went downstairs and I obtained some money out of the car which he said was there.

Q In the glove compartment. Or I'm asking.

A I believe it was on the visor. I believe it was behind the visor.

Q Certain papers, also, however, were removed from the glove compartment by you.

A I believe there were some papers, yes, sir.

Q And those were taken up to the vice squad room.

A I'm not sure. I believe there possibly was a letter, but I'm not sure.

Q Did you make any search of the automobile?

A Yes, sir.

Q Did you— When the defendant was arrested, he was down in the shopping area of Richmond, was he not, near 7th and Macdonald.

A Yes, sir.

Q And he and Miss Carr and the two children were carrying packages, were they not?

A There was a woman with him; I don't know her last name. And some children.

Q Yes. They were carrying packages.

[fol. 220] A So far as I know, the defendant was not carrying one. I can't recall if the woman was carrying one or not.

Q Well, did you make any attempt to find whether they had been shopping in an effort to locate this marked money?

A No, sir, I didn't.

Q Did you ever ask the defendant—I believe you said you did ask him where he had been.

A I don't believe I did, no, sir.

Q When you determined that the marked money was not in his possession, you also later determined, or about the same time determined that the lady that was with him did not have the money, either.

A I didn't, no, sir.

Q Well, you were advised by one of the other officers that she did not have it.

A I may have been. I don't recall if I was told.

Q But at that point you told the defendant that you were finished with his part of the case, did you not?

A That I was finished with his part of the case?

Q Yes. A Not to my knowledge, no, sir.

Q You did not file any Federal charge. A No, sir.

Q You had been working on this investigation for some time previous to December the 21st, isn't that correct?

A Yes, sir.

Q You never filed any Federal charge. A No, sir.

Q And is it not true that your decision in that regard [fol. 221] was because he did not have the marked money on him.

A No, sir, that is not true.

Q Do you have some report reflecting your activities in this investigation concerning Joe Cooper?

A Only our daily activity report showing that we have been on an investigation. We do not write an official report to our bureau.

Q It showed your various activities.

A Yes, sir, that we were engaged. In other words, daily activities engaged in certain investigations.

Q You kept notes concerning your activities on this case?

A So far as I know, I made no notes regarding the case at that time.

Q You made some telephone transcriptions, did you not?

A Yes, sir.

Q Did you make those personally?

A Would you explain? Do you mean was I present?

Q Yes. A Yes, sir.

Q And were they made by you or at your direction?

A Under my direction or supervision, yes.

Q And where were those— Where were you when those were made?

A At the office of the Federal Bureau of Narcotics in San Francisco.

Q And then they consisted of transcribing certain telephone communications, did they not?

[fol. 222] Q And was that on a line connected with Beacon 2-1879?

A Yes, sir.

Q And where was that interception made?

A In other words, where did we record it?

Q Yes.

A Right in the room in which I sit we have a telephone.

Q I see.

A We attached a coil to the telephone.

Q In other words, somebody at your office placed a call to this Beacon number.

A Yes, sir.

Q And on more than one occasion? A Yes, sir.

Q And over what period of time?

A The first that I know for sure was on December the 7th. There possibly was one before that. But my best recollection was December the 7th was the first one.

Q You were using informants to make calls to Mr. Cooper, were you?

A One, yes, sir.

Q Where did you go after— You mentioned that after you saw this Oldsmobile go down toward Newell's Market, you then drove down Cutting past the market.

A Yes, sir.

Q Now, did you see Mr. Green at that time?

A As we passed the parking lot, yes, sir.

Q And was he sitting in this blue Oldsmobile?

[fol. 223] A No, sir.

Q Was he walking in the parking lot? A Yes, sir.

Q And do you remember which direction?

A Toward the intersection, or actually toward Cutting Boulevard. Cutting and 23rd, as you know, cross. He was angling to some extent toward that intersection. Actually he was going toward Cutting.

Q He was not in or near the defendant's car at that moment.

A He was, yes, sir, near the car.

Q He was what? A Near the car.

Q I see. How far?

A An estimated three or four feet.

Q But facing away from it. A Yes, sir.

Q All right. Now, where did you go after that?

A We drove—I don't know exactly the streets that we went on. We drove around about way and went back to 19th Street.

Q Was it your purpose to have a surveillance of this automobile?

A Yes, sir.

Q And you were in radio communication with Mr. Groom's automobile, were you not, Lieutenant Sullivan and Mr. Groom?

A I don't actually know—remember who was in the other car. But the other State vehicle has a communication with the other State vehicle.

Q All right. So you were engaged in the surveillance, or you intended to be.

[fol. 224] A Yes, sir.

Q Did you follow the defendant's—this car as you described as the defendant's car?

A We went after it, but we did not locate it.

Q You didn't see it at any time after it left the parking lot.

A Yes, sir, I saw it again—

Q Later in the afternoon? A Yes, sir.

Q Down on 7th and Macdonald. A Yes, sir.

Q But between the time you saw it in the parking lot you did not see it again—

A Not so far as I know, no, sir.

Q Who if anybody gave you directions as to where to proceed in connection with this surveillance?

A I believe Lieutenant Sullivan was using the radio. Whoever was using the radio in the other vehicle. I'm not sure, but I vaguely remember Lieutenant Sullivan talking at one time or another. I believe it was he, but I'm not sure.

Q Do you recall if beforehand there was any plan of operation to conduct this surveillance after the exchange of mone was made for narcotics?

A I don't recall any discussion that we were to follow the car, unless it would have been during the transaction. In other words, after we had seen him leave his home and go to the parking lot. I don't recall discussing it before that.

Q I see. But you knew after that that there was to be a surveillance of the car.

[fol. 225] A We were going to attempt one, yes, sir.

Q And were the other officers that you mentioned, were they also to be engaged in the surveillance of this car?

A Yes, sir.

Q And what was the purpose, if you know, of that surveillance?

A Well, actually the original purpose for us to go back to 19th Street to see the car return home. And I believe that was the time the decision was made we would attempt to pick up on it and follow it for a short time.

Q To arrest Mr. Cooper, isn't that the purpose?

A Not at that specific time, no, sir.

Q Well, let's say shortly after he went home.

A No, sir. In fact, as I recall, we discussed, even before we went out, that we would try to make another buy, a second purchase.

Q But during the afternoon you decided not to?

A When he did not return home, yes, sir. We attempted to, but he did not return home.

MR. MORAN: I believe that's all.

MR. CURTIN: One question, Your Honor, on redirect.

REDIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Yates, you stated that you found money in the defendant's car, and I believe you stated over the visor.

A To my best recollection it was. It was in a billfold or some container behind the visor. It may possibly have [fol. 226] been in the pockets, but my recollection is it was behind the visor.

Q For the record, how much money did you find there, sir, as best you can recall?

A I'm not sure. I believe it was approximately \$55.00.

MR. CURTIN: That's all of this witness, Your Honor.

THE COURT: Anything further, Mr. Moran?

RECROSS EXAMINATION

BY MR. MORAN: Q You asked the lieutenant where he had gotten that money?

A I probably did. I don't recall.

Q Would it refresh your recollection to ask whether he told you that he had cashed a disability check that day?

A I don't remember him saying that, no, sir.

Q You don't have a recollection one way or the other.

A No, sir.

MR. MORAN: That's all.

MR. CURTIN: One further question, then, on re-direct.

FURTHER REDIRECT EXAMINATION

BY MR. CURTIN: Q Did you determine that Mr. Cooper was disabled in any way after the arrest, sir?

A I didn't know it, no, sir.

MR. CURTIN: That's all of this witness.

MR. MORAN: Well, these things always lead to another.

FURTHER RECROSS EXAMINATION

BY MR. MORAN: Q You were the one that at the [fol. 227] time of the arrest, came up behind Mr. Cooper and grabbed him by the left arm?

A I didn't grab him when I walked up to him. It was after I saw his hand go toward his mouth. At that time I did grab his left arm.

Q You didn't wrench—

A Actually I didn't grab a hold of him. I walked up and told him he was under arrest and he just stood there. I possibly placed my hand on his arm, but I did not restrain him because I didn't see there was any purpose to, because he was just standing there.

Q What happened, then, after you told him that?

A I said "You're under arrest." He said, "Okay. It's in there behind the visor." And then I said, "What's in there?" He says, "The marijuana." And he was stooped over, and about that time I was looking in and that's when I saw his hand go—actually it was at his pocket going to his mouth.

Q You didn't see what was in his hand, I take it.

A Not for sure, no, sir. I thought I saw something in his hand, but I wasn't sure.

Q You found out later that he had some breath pills in his pocket?

A I don't remember any, no, sir.

Q You don't remember making a search or the details of the search.

A I searched his pocket, because—I remember that. [fol. 228] I don't remember finding anything in his pocket at that time.

MR. MORAN: That's all I have.

MR. CURTIN: Nothing further.

The witness may be excused.

We'll call Sergeant Billingsley.

ORVILLE L. BILLINGSLEY,

called as a witness on behalf of the People, having been first duly sworn, was examined and testified as follows:

THE CLERK: What is your full name, please?

THE WITNESS: Orville L. Billingsley.

THE COURT: Just take the witness chair, Mr. Billingsley.

DIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Billingsley, what is your address, for the record, please?

A 2741 Sheldon Drive, Richmond.

Q And what is your business or occupation, sir?

A I'm a police sergeant, City of Richmond.

Q And to what detail or bureau are you attached to the City of Richmond Police Department?

A Special services.

Q Is that commonly known as the vice squad?

A Yes.

Q Commonly makes investigations regarding narcotics, sir?

A Yes.

Q Were you so attached on December the 21st, 1961? [fol. 229] A I was assigned there on a break-in basis officially on the 1st of January.

Q Were you working with that detail on that day, sir?

A Yes.

Q Did you have occasion to see the defendant in this matter, Mr. Joe Cooper, on that day?

A Yes.

Q And do you see that person present here in court?

A Yes.

Q Would you point him out to his Honor.

A The gentleman at the end of the table.

Q Did you have occasion to see him in the City of Richmond on the day of December the 21st, 1961?

A Yes, sir.

Q And where was it that you saw him, Sergeant?

A At the corner of 7th and Macdonald Avenue.

Q And what was the occasion that you had to be there, sir?

A I was there to help take him into custody.

Q And will you tell us what you observed prior to seeing Mr. Cooper, if you saw anything at that time.

A I saw him two or three strides before he reached the door of his car, the door on the right-hand side.

Q What kind of a car was it, Mr. Billingsley?

A It was an Oldsmobile.

Q Can you tell us the year? A A 1957 model.

Q And then when you saw Mr. Cooper go to his car, [fol. 230] tell us what you observed next.

A At about the instant he reached this door of his car, Agent Groom, State Agent Groom came up to his right-hand side and Federal Agent Yates on his left-hand side. They took a position before I was there. It appeared that they each took his arm, Groom the right arm and Yates the left arm.

Q And then tell us what you observed next, sir?

A Well, within seconds I had reached a position in back of the defendants. The conversation that I first heard when I reached the defendant was that Agent Yates said something to the effect, "Are you holding any narcotics? And the defendant said, "Yes, some marijuana; it's in the car there. It's there by the visor." And he was ducking down in a position as though to look in toward the visor of his car. And Yates went down into the same crouched position to look in the area of the visor, and at about this time there was a sudden movement on the part of the defendant. He wrenched his left hand free from Yates and reached into the area—the left—correction—the right front area of his body into a pocket, a movement from that area toward his mouth. Agent Groom at this point started calling out, "He's eating my finger; he's eating my finger! Let it go! You're eating my finger!" At this same instant I was trying to get ahold of his right arm myself. /

Q And the words that you heard coming from Agent Groom, could you tell the Court how long in time you heard [fol. 231] these remarks from Agent Groom?

A I would estimate it, well, from—possibly twenty-five seconds, twenty to twenty-five seconds.

Q And what did you hear during this period of time?

A Well, Groom was crying out in pain, "You've got my finger. Let it go; let it go. You're eating my finger." And that was about the words I recall repeated over and over.

Q Then tell us what occurred next, sir, after you heard this.

A Well, within the twenty or twenty-five seconds, in some manner Agent Groom freed his finger from the defendant's mouth in a jerking motion. By this time the defendant was pressed against the hood of his car and we were placing cuffs on his hands. I had an arm lock on his right arm at this point, and as I recall Yates and Officer Stumpf in the area of the left arm.

Q Now, Mr. Billingsley, after this occurrence, did you have occasion to be present at a conversation with the defendant, Mr. Cooper?

A Yes.

Q When was this, sir?

A There was a brief conversation at the station the same day, and a second conversation the next day.

Q On the brief conversation on the same day with Mr. Cooper, what was said at that time, sir?

A As best I recall, something about he told Officer Yates and myself that he had some money down in his [fol. 232] car. And I don't recall any specific conversation. That's about all I do recall, that he did tell Officer Yates there was some money down in his car and told him where to find it.

Q Then on the following day, you said there was a further conversation with Mr. Cooper?

A Yes.

Q Was that about the events that had occurred on December 21st, 1961?

A Yes.

Q And was this conversation with Mr. Cooper one that was freely and voluntarily entered into by him in your presence?

A Yes.

Q And there was no coercion used or duress or threats of duress used in any manner.

A No, sir.

Q No promises of immunity were made to him.

A None at all.

Q And what was said on the day following about the events of December 1st, 1961?

A Well, some of the questions I can recall that were asked by Agent Groom, one was if he used heroin, if he knew what heroin looked like, if he ever sold it. His answers to those questions were in the negative. There was conversation about Agent Groom's finger having been bitten on the date of 21, December. He was apologetic about that. Agent Groom asked him what it was he was eating, and he said it was marijuana. Later in the con-[fol. 233] versation after Agent Groom had said something to the effect, "Don't you know you aren't supposed to be holding marijuana?" His answer was—"Maybe it was a breath pill." I asked him a question why would he eat on the agent's finger if this was only some breath pills. There was no direct answer, as I recall, to my question.

Other questions asked of the defendant was, how often did he smoke marijuana. At one time he smoked it quite frequently—

THE COURT: You mean he said that?

THE WITNESS: Yes.

A And then he changed this to state that he hadn't smoked, as best I can recall, since '57. And then I asked the question whether or not this marijuana that he had previously said that he ate, he had carried it for four years. And he said, "Well, no, not rightly so; that was probably those breath pills." This is the best that I can recall of this conversation.

I asked him a question if he had ever unknowingly associated with persons whom he later learned used narcotics. He said yes there was one time a person he got starting getting skinny, and "I suspected he was using it so I dropped him." I asked him what that person's name was. As I recall he said—

MR. MORAN: If the Court please, I'm going to object [fol. 234] to this part as incompetent and irrelevant.

THE COURT: Yes, it will be sustained.

MR. CURTIN: I have no further questions of this witness, Your Honor.

THE COURT: Cross examination, Mr. Moran.

CROSS EXAMINATION

BY MR. MORAN: Q Sergeant Billingsley, the defendant told you and the officers that day that—the day of this interrogation, which was the day after the accident, I take it —

A Yes.

Q —that his teeth had almost been pulled out.

A Words along those lines, yes, sir.

Q And he said that his nose and lip had been cut.

A As best I can recall on that during the conversation about the finger, he was saying, "You almost pulled my tooth out," or something. And the agent was saying, "I was trying to get my finger out." That's about the best I can recall offhand.

Q And he said that his throat was scratched and swollen.

A It's my recollection he did say something about the throat being sore. I can't recall what the words were. Words along that line, yes.

Q Now, do you have an actual recollection that he told you and the other officers that he smoked marijuana frequently?

A Yes, that, words along that line, yes. And then in [fol. 235] pinning that down, I asked him how many he had smoked on the day of his arrest, and the day before, and he said he had smoked none, and then he said, as I recall, it had been back in '57 he used to smoke marijuana.

Q Do you have a copy of your transcript here?

A I don't, sir, no, sir. I have the tape itself.

Q At the time of the arrest, your watchband was broken?

A Yes, sir.

Q What caused that, if you know?

A I don't know, sir.

Q You accused Cooper of hitting you? A No, sir.

Q Did you hit him? A No, sir.

MR. MORAN: If you can't find that, Mr. Curtin, maybe I can find it.

MR. CURTIN: I'm sorry, Counsel Yes. This is a copy of— I beg your pardon. That's the wrong one.

That's a copy of the transcript I've already furnished to counsel. (Handing)

MR. MORAN: Would you find for me—not read it aloud, but find for me where it appears that he smoked, he told you in effect, that he smoked marijuana frequently.

THE WITNESS: What I had reference to is in the general area of eight—on page seven from about line eight to twenty-three is what I had —

MR. MORAN: Line what, eight?

THE WITNESS: Starting at about the question, line [fol. 236] 8 on page 7.

Q (By Mr. Moran) All right. And the question was, "How much weed do you usually smoke a day?"

"ANSWER: I very seldom get any.

"QUESTION: Pardon?

"ANSWER: Very seldom have any.

"QUESTION: Do you smoke it daily or once or twice a week?

"ANSWER: No.

"About how often do you smoke it?

"Oh, before I left Los Angeles, I used to smoke, but I never smoked much up here. There isn't much up here.

"QUESTION: What does it do to you.

"ANSWER: Nothing but makes you eat a lot.

"QUESTION: Makes it give you an appetite.

"ANSWER: No."

Is that what you had reference to?

A Yes.

Q And he told you in other portions of the conversation that this event down in Los Angeles had been several years ago, did he not?

A Yes, sir.

Q And he was arrested for it down there.

A I believe in answer to a question from Agent Groom he did say he was arrested, yes.

[fol. 237] Q Do you have any record, whether by transcription or in writing, as to what you and the other officers discussed with Mr. Cooper in the Richmond Police Department after his arrest on the 21st of December?

A No, sir. I don't, personally.

Q You didn't make any record of that.

A I don't have any record of it, no, sir.

Q Who all was present that afternoon when he was at the Richmond Police Department?

A On the 21st?

Q Yes.

A Let's see. It was— The Federal agent and I brought the defendant to the station in the office. I believe before he left the office, that Officer Stumpf arrived, for a certainty. As I recall, Officer Stumpf and I took the defendant down to the booking desk.

Q There was a period of time when you and Officer Stumpf were with the defendant, that you were the only law enforcement officers with the defendant.

A It's my recollection—I'm not certain that Officer Stumpf is the officer who accompanied me to the jail. There was some officer. If that was Officer Stumpf, it would have been Officer Stumpf and I alone en route from the office to the booking desk. It was myself and some other officer. I'm not positive who what officer was.

Q You had rather a violent argument with Mr. Cooper [fol. 238] on that time when you and the other officer were alone with him in the Richmond Police Department.

A No, sir.

Q You called him a son-of-a-bitch, did you not?

A No, sir, No cause to.

Q And you complained bitterly about your watchband being broken.

A No, sir. I didn't know my band was broken. One of the officers handed me my watch after the scuffle. I didn't know it had been broken.

Q You told him that you were going to see that he was held in jail whether it had to be for parole violation or whatever, he was going to stay in jail?

A No, sir, no conversation along that line.

Q Officer, you mentioned that as you approached at the time of the arrest, Groom had a hold of his right arm, Yates had a hold of his left arm.

A Yes, sir.

Q And that in going through a maneuver of some kind that he wrenched his left hand free from Yates.

A Yes. When they first took their positions, had the arms, there was no motion at all. The defendant made no motion or as far as I could hear, said nothing, for the first two seconds.

Q During those few seconds, Yates had a hold of his left arm and Agent Groom had a hold of his right arm: [fol. 239] A Yes.

Q And you actually saw him wrench his left arm free from Yates.

A Yes. I was immediately at his back.

Q And you're just as sure of that as everything you have told us today, are you not?

A Yes, sir.

MR. MORAN: That's all.

REDIRECT EXAMINATION

BY MR. CURTIN: Q Mr. Billingsley, the discussion on the 22nd of December, 1961, with Mr. Cooper, was preserved by mechanical preservation, was it not, sir?

A Yes.

Q And that was what?

A On a recorder, tape.

Q Tape recorder? A Yes.

Q And did you bring that tape with you here to court, sir?

A Yes, sir.

Q And do you have it with you? A Yes, sir.

MR. CURTIN: Your Honor, we would ask that it be marked for identification only.

MR. MORAN: Of course, I would object to it. Now the only part that he's been questioned about on that was this marijuana business. He's had an opportunity to read the record. He said, "That's what I meant." It was read. I would certainly object to go into the balance of it.

[fol. 240] THE COURT: Well, of course, I have no idea what's in it. What usually happens, parts are admissible and parts are not admissible.

Is this a copy of that that you have gone into?

MR. CURTIN: Yes, Your Honor. For the record may I say that I have offered it only for identification so that it will be held for record purposes. I have not offered it in evidence.

MR. MORAN: I appreciate that.

THE COURT: Well, it will be received and marked People's Number 10, is it, for identification only.

MR. CURTIN: Would you hand that—

Officer, better show the defense counsel first, for the record.

THE COURT: Well, if it's not going into evidence, I guess you don't care.

MR. MORAN: I don't care.

THE COURT: If it's marked, it will remain here in the custody of the Clerk, and that's all you want it for.

MR. CURTIN: Yes. The tape is presently mounted on the recorder.

Would you take it off and give that to the Clerk, for the record, to mark.

For the record, Mr. Billingsley, the tape and the box that you are handing to the Clerk, you have identified that as the tape in question, sir?

[fol. 241] THE WITNESS: Yes.

MR. CURTIN: Thank you.

(Whereupon the article above referred to was marked People's Exhibit No. 10 for Identification.)

MR. CURTIN: That's all I have of this witness, Your Honor.

THE COURT: Mr. Moran?

MR. MORAN: That's all.

THE COURT: The officer may be excused?

MR. CURTIN: Yes.

At this time, Your Honor, the People will rest their case.

May I speak to defense counsel, Your Honor?

THE COURT: Yes, you may.

(Mr. Curtin and Mr. Moran conferring)

THE COURT: Call your first witness, Mr. Moran.

MR. MORAN: If the Court please, before doing that, I believe this is a case where I feel that a motion for acquittal is in order.

The circumstances, I believe, are quite strange and unusual. The informant, who is in custody in this county, has not been called to testify. It would appear, as Your Honor well knows, that they were relying heavily on marked money, a situation involving marked money, and—

THE COURT: I just wonder, Mr. Moran, if there is a motion to advise the Jury to acquit, but I don't [fol. 242] know of any motion to dismiss in a criminal case.

MR. MORAN: I was just up there looking at that Penal Code section myself. Although there isn't a code section covering it—I just went up a few minutes ago—there are many cases discussing—

THE COURT: Oh, there isn't any question. If a crime has not been made out—

MR. MORAN: Yes. Whatever the motion may be, perhaps dismissal would be more properly phrased.

I do think, though, that there are serious gaps in the case that's been presented here. I am somewhat appalled by the obvious "pat" story that the officers have come up with, and still that shows so many gaps of the type I've mentioned. I am thinking particularly of the claim that was made before the Grand Jury, and elsewhere, that this Mr. Green was in constant sight of the officers. Armenta then comes in and testifies that during the obviously critical period he was completely out of his sight. Mr. Groom is in the same situation; he's behind the fence and then he's behind a house. There are cars in front of him. He's six feet tall looking out over a series of parked cars some 350 feet away. Mr. Groom—and all this under oath—says the man stood at the driver's side of the car, didn't get in. Lieutenant Sullivan, who has no records on the case and is obviously accepting a recollection that's quite faulty, said no, he got in the car; he went in the left side. [fol. 243] Billingsley said he wrenched his left arm free from Yates. Yates said no, he didn't have hold of it at the time. The marked money situation, I can't quite understand it. If they were going to make another buy, it would appear to me that the—Conceded that marked money would not have been used in the first place, they had four carloads of officers and they can't—they say they can't keep track of this man.

I don't know the defendant; I don't know anything about him. But I feel that this is the type of investigation, the type of error—not calling Green—that seems to me there is something very wrong there; that there's so much reasonable doubt that I don't believe this case should be allowed to proceed further.

MR. CURTIN: Your Honor, the People rely on cases that have stated that a participant in a case such as this is not actually a necessary witness where there are eye witnesses to the transaction.

THE COURT: Well, I don't think I have any right to pass on that. I guess Green is not a high class citizen. I am sure that Mr. Moran doesn't want me to say the District Attorney should or shouldn't put a witness on that they themselves don't have too much confidence in on the witness stand. I think I have to take the case as it's presented to me.

Actually, I see no reason, Mr. Moran, to disbelieve [fol. 244] at this point the basic testimony of the officers. I have no doubt that the defendant was out there. I have no doubt that Green was out there. I have no doubt that the contact was made. The two bindles are here. Agent Lee says they were turned over to him by Mr. Green after the contact.

As in all cases, on some of the details there are differences of opinion. As a matter of fact, it would be most unusual if this were not so.

In the absence of something else to raise some doubt on the basic story of the officers as told, I don't think I can direct myself to acquit him. And I think, in essence, that's about what the motion amounts to.

If we had a jury, the law doesn't permit the judge to direct them to acquit. Of course, they're not bound by the advice. But there is such a motion.

So the motion to dismiss will be denied.

MR. MORAN: Now if the Court please, and I have discussed this with Mr. Curtin, this Mr. Green will be available—he's being made available at my request for tomorrow morning. I would wonder if it would be inconvenient to take a recess until that time.

THE COURT: I have no objection.

Do you, Mr. Curtin?

MR. CURTIN: If counsel requests it, we certainly—It's within the discretion of the Court.

THE COURT: Well, I haven't any objection. I assume that we'll be able to finish this case.

MR. CURTIN: I believe probably tomorrow.

THE COURT: Well, so that counsel may know, you have all day tomorrow. Friday morning I have the psychiatric calendar in the morning. So you have Friday afternoon.

MR. MORAN: I'm sure we'll finish tomorrow. Probably in the morning.

THE COURT: Well then, the defendant's request will be granted, and we'll take a recess until 10:00 o'clock tomorrow morning.

(Whereupon an adjournment was had until Thursday, April 12th, 1962.)

[fol. 246]

THURSDAY, APRIL 12th, 1962 MORNING SESSION:

PROCEEDINGS

THE COURT: Good morning, gentlemen.

MR. CURTIN: Good morning, Your Honor.

MR. MORAN: Good morning.

THE COURT: Are you ready to call your first witness?

MR. MORAN: Mr. Cooper, will you take the stand.

JOE NATHAN COOPER,

called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

THE COURT: Is it Joe Cooper or Joseph Cooper?

THE WITNESS: It's Joe Nathan. Joe Nathan Cooper.

DIRECT EXAMINATION

BY MR. MORAN: Q Mr. Cooper, do you own a 1957 Oldsmobile?

A No, sir, I don't.

Q Did you on occasions have the use of a 1957 Oldsmobile?

A Yes, a couple times I did.

Q And whose automobile is it?

A It belongs to Barber.

Q Charles Barber? A Yes, sir.

Q And is that a relative of yours? A Yes, sir.

Q And you on occasions during the period from last April resided with your aunt, Mrs. Gulley, in Richmond?

A Yes, sir.

Q Did she also have a car? A Yes, sir.

Q And did you use that from time to time?

[fol. 247] A Yes, sir.

Q Now, you've heard the testimony here concerning a Frank Green.

A Yes, sir.

Q Do you know Mr. Green? A Yes, sir. 1943.

Q You've known him over a period of years.

A Yes, sir.

Q Now, what was the year you first met him?

A 1943.

Q All right. Now, then, following 1943, were you away from Richmond for a period of time?

A Fourteen years or better.

Q And returned after that time. A Yes, sir.

Q Now, after April of 1961, did you occasionally see Green?

A I seen Green in July and also I seen Green during the time—sometime during the latter part of the summer.

Q Of 1961. A Yes, sir.

Q Now, there were approximately two occasions when you were with him.

A Yes, sir.

Q And where were you at the time, the first time you saw him.

A The first time I was at 6th and Macdonald in the barber shop.

Q All right. And where did you see him the second time?

A Well, the second time I seen him there in the barber shop.

Q What was taking place at the time you saw him?

A Well, we was gambling together there.

[fol. 248] Q And were there others involved?

A Yes, sir. There's quite a few of them were in there. That's every day gambling there.

Q Did a dispute arise between you and Green at that time?

A Yes, sir, it did.

Q And was money owed to you from Green as a result of some gambling activities?

A Yes, sir, it did. But it didn't take place—the scuffling and little fight he and I had, it taken place somewhere between nine or two—about nine days or two weeks before this arrest.

Q I see. Did that relate back to this gambling activity?

A Yes, sir.

Q And was it because of money that was owed to you?

A Yes, sir.

Q Now, the scuffle, that was sometime in the early part of December.

A Yes, sir.

Q And where did that take place? A On 6th Street.

Q And Macdonald in Richmond. A Yes, sir.

Q What happened?

A Well, he and I got to arguing over the money, after he got broke in the game. So he kept annoying me, asking to borrow some money for me. So I let him have \$7.00 for a shot. He lost that. He got broke. After he got broke he kept annoying me for more money. So I said, "I'll lend [fol. 249] you the money." He said, "I'm making \$45.00 a day. I'll let you have the money back." I said, "I'm going to have to ask for my money on payday or run you down for it." So I give him the money. And he goes on about two weeks before I ever get a chance to talk to him about the money. So then I asked him about the money. Well, it started an argument from one word to another. I asked him, I said, "You could have give my money to me; you could have give it to my relative or anybody if you wanted to pay me my money." So one word led up to another. It led up to an argument, and he and I had just a fist fight.

Q Now, after that time, have you ever seen him again prior to your arrest on December 21st?

A No, sir. I seen him off at a distance once on—down on Macdonald Street, there on 6th and Macdonald, but never was close to him any more.

Q You never saw him to talk to him.

A No. No, he wouldn't talk to me.

Q Were you ever within ten feet of him?

A No.

Q Did you ever see him down at the parking lot at Newell's Market on any occasion?

A No.

Q Whether it's— I'm not referring just to December 21st. Did you ever see him or meet him in that parking lot?

A No.

[fol. 250] Q Or within a block or two blocks of that parking lot.

A No, I didn't.

Q Do you recall if you were in the vicinity— I'll withdraw that.

Your aunt's home is two or three blocks from this market.

A Yes, sir.

Q Do you recall whether or not on the 21st of December you were at the Newell's Market?

A No, sir, I wasn't, not that day.

Q Do you recall where you were between the hours of, let's say, 12:30 p.m. and 3:30 p.m. of that day? This is the day you were arrested.

A Yes, sir. Well, I left 440-15th Street and I had spent the night there at 440-15th, and then I left. I came by my house where my aunt was, because she was raving about "Let's go do Christmas shopping with the kids."

Q What time was that you went over to your aunt's house?

A Must have been somewhere around about 10:30, something like that.

Q How long did you stay there?

A Just long enough to slip off my shoes—change shoes.

Q You left about what?

A It must have been somewhere between 10:30 and 11:00 o'clock. I wasn't there but about a few minutes.

Q Where did you go then?

[fol. 251] A I went to a Miss Carr's.

Q That's this Edna Mae Carr that's been mentioned.

A Yes, sir.

Q You went to her house. A Yes, sir.

Q Where does she live, by the way?

A She live between 26th and 27th on Cutting.

Q And how long did you stay there?

A Just about five or ten minutes, to the best, because she already was getting ready, wrapping her baby up. She was getting out of the bed because she had just come out of the hospital. She said it was a sunshiny day, "and I'll come and call your aunt and tell her if she will take me down town."

Q Don't tell us what she said. How long did you stay there?

A Just a few minutes. Just long enough for her to come down and get in the car.

Q She got in the car with some of her children.

A Yes, sir. Three.

Q The baby and—

A And the eleven and twelve.

Q Where did you go from there?

A To her mother's house.

Q Where is that located?

A That's located in North Richmond.

Q Approximately where?

A That's on Gertrude Street, if I'm not mistaken.

[fol. 252] Q You spent some time there.

A Oh, about an hour and fifteen minutes exactly, I think.

Q All right. About what time did you leave that home?

A We left there around about— It must have been somewhere around—after 1:00 o'clock, a little after 1:00 o'clock, something like that.

Q Where did you go to then?

A We went downtown on 7th and Macdonald.

Q And parked on the street. A Yes, sir.

Q And at that time did you do the Christmas shopping?

A Yes, sir. That's why I joined my aunt and her family.

Q Now, did you continue that shopping up until the time you returned to your car and were arrested?

A Yes, sir, I did.

Q Now Edna Mae Carr, is she in the—under arrest at the present time?

A At the present time she wasn't under arrest.

Q Well, I mean she's awaiting trial.

A Yes, sir. She waiting trial now. She got arrested along the time I did.

Q Now would you tell the Court what happened as you completed your shopping and approached your car on December 21st and down at 7th and Macdonald.

A I completed the shopping. My aunt and I and her two daughters eleven and twelve, and my aunt's three kids, sixteen, thirteen and ten and sister Maxwell's [fol. 253] daughter Gloria Maxwell, which she is about fourteen, we all went from one department store to an-

other one. On my way back from down toward—between—from 10th Street back that a-way from the women's dress shop, coming back—we come on the far side, on the south side of Macdonald, coming from back towards 10th Street, and Miss Carr's two daughters they taken a dollar and a half apiece and went in a store and bought some handkerchiefs for school, to make a present, and they bought some popcorn, large bags of popcorn. And the oldest girl left her handkerchiefs in the store someplace and they began to squabble about it. So we went to turn around to go back and see could we locate the handkerchiefs that she bought for a present, and we didn't locate the handkerchiefs so they began to quarrel among themselves, so I told them, "Oh, don't quarrel—don't talk like that—"

THE COURT: We don't want to know what you said to them.

A I asked her, I said, "Get you some popcorn." So they bought two large bags of popcorn, oversize bags. We was eating the popcorn, coming down the south side toward 10th Street. When I got to the corner on 7th, I turned to come across the street and under the light there. We had to come from then to—that must be east—east side, coming back to the west side of Macdonald on 7th Street, and just when I entered the corner there, and [fol. 254] I told Miss Carr, I said, "Well—" I said, "Can't you unlock the door?" I had an armful of stuff that we been shopping. And I had four pair of shoes for cleaning and one repair, which is the pair I have on now. And I said, "Well, you get up under the wheel and drive."

Q Get what?

A I said, "Get up under the wheel and make a block so I can stop in the shoe shop, this shining parlor here on 6th Street, and ask this guy would he clean these shoes." She said, "Well, you know I can't unlock that door because it's kind of hard to unlock." It's a new lock. So I said, "Hand me the keys. I'll try it." Just when I got to the car door to go to reach for the car, that's when these guys—had on blue jeans, kind of like trench coats, you know, work clothes, and that's when— I didn't see them when I got there. As soon as I went to bend over the car, that's when someone tackled me like that, (Dem-

onstrating) grabbed me. Somebody had my head back. And so by this scuffling a-going on, I turned around and I yelled out—I hollered.

Q You yelled what?

A I yelled out and hollered.

Q Yes.

A And so Miss Carr's oldest daughter—she's kind of overwitted—and she just had like a nervous wreck, you know. She just wet all her clothes all up and she collapsed there.

[fol. 255] Q How many men were involved there, as you recall?

A About eight men to my notion.

THE COURT: You didn't recognize any of them.

THE WITNESS: No, sir, I didn't.

Q (By Mr. Moran) Did you see any of them as they were coming up behind you?

A No, sir, I didn't. So when they had me on each side and had my head pulled back that a-way and a lock around my head, I taken the guy to be a Chinese looking guy—I don't know whether he was especially, Chinese—he was Judo-chopping me in the neck. So the other guys grabbed me and— I lost all my teeth there. These are numb now. These got to come out. This is numb now. They was swinging at me. I said, "What you guys want?" They said, "We is the narcotics." I said, "What do you mean?" He said, "We're looking for narcotics." I said, "Wait a minute. Don't kill me." I said, "You don't have to kill me if you want to look for narcotics." I said, "Look in my car." He said, "What?" I said, "Look up on the blinds." There was a green container billfold there. I said, "Look in there; you may find some there," trying to get him lose his hold. He said, "You got some in your mouth." I said, "There's nothing in my mouth." So by them working on me so long, I run out of gas and by me laying back on the car, they had me all straining back, one guy come across the hood of the car and got my head back. So by them banging on me, well [fol. 256] I just lost out, you know, on my feet.

Q Did one of the officers put his finger in you mouth?

A I don't remember. I don't remember.

Q You don't remember biting anybody's finger?

A No, sir, I don't.

Q Did any of the officers accuse you of having swallowed something or put something in your mouth?

A He— Well, he told me after we got to the station—

Q I mean while you were there at the scene.

A When we got in the car, I remember one officer asked me, said, "Did you have anything in your mouth? Did you swallow something?" I said, "You didn't get nothing, boy," like that. That's what I said to him. He said, "You can take it easy. I'm the Federal. If there's any arrest, it's our case." I heard him tell Sergeant Billingsley that.

Q Who said that?

A This Yates.

Q Yates?

A He said, "Take it easy. There ain't going to be no more fighting." He said, "You satisfied?" I said, "Yes, sir, I am." He said, "Okay, just be quiet." I said, "Would you please fix it so I can get some air? I'm about to faint." I said, "Let me spit some teeth out." The blood was streaming out then. My nose was busted in there. I had my breath cut off. I said, "You all got [fol. 257] my teeth knocked out." He said, "We'll be in a station in a minute." Somehow or another they opened my clothes out. He said, "Well, you can take it easy." He said, "We don't believe in that brutality." He said, "You know, the Feds work much easier than that." Sergeant Billingsley said, "You better be glad we were on the front side of the street." He said, "If we had you on the back street," he said, "we'd have killed you."

Q That was Billingsley.

A Yes, sir. And he said, "You caused a big commotion like that down there, everybody looking on like that, with all that yelling, hollering going on." I said, "I didn't know who you guys were, robbers, gangsters, or what." He said, "Didn't you hear me when I said I was an officer?" I said, "Afterwards, after you done tackled me, one of the guys say, 'I'm an officer.'" I said, "I won't resist arrest." I said, "Well, lose your hold, because you're going to break this arm. This arm can't stand no twisting. The bone has been removed and I only got one

bone." I said, "Feel at the end of my arm there, you will feel the end of the bone sticking up." He said, "Okay. Well, you're under arrest." So Sergeant Billingsley told me, said, "Well, if we'd have had you on the back street we'd have killed you."

Q You just told us that.

A So the fellow didn't—he said, "Well, you know if [fol. 258] there's any conviction here," he says, "it's our case."

Q While you were still down there, at any time did you jerk or wrench your left arm away from one of the officers?

A No, sir, I couldn't.

Q Do you have strength in that left arm?

A No, sir, not no strength at all. The bone has been removed from it.

Q That was injured several years ago?

A Yes, sir.

Q And a portion of the bone removed.

A Yes, sir.

Q Now, were you bleeding in the area of your face, your nose, your mouth?

A Yes sir.

Q At the time of the arrest.

A Before they arrested me, you mean?

Q No, just as a result of the arrest.

A Yes, sir.

Q And where generally were you injured?

A My mouth and my jaw, my chin here, and my nose.

Q Were those areas bleeding?

A Yes, sir.

Q You mentioned something about your teeth being out. Were they actually pulled out or knocked out— A No, sir.

Q —or were they loosened?

A They was knocked out. (Demonstrating)
[fol. 259] Q How many teeth did you lose?

A Oh, I lost three teeth; one was a tooth that I just worn in the side, you know, a partial plate, and I had one on each side, a bridge, one on each side there. And the other teeth was ones— My original teeth was already in. These here the doctor said down here in Martinez that

they got to come out because they going to tie them back up. The nerves or something is numb around there and he can't get—

Q They weren't loose before this occurrence.

A No, sir.

Q Now, who transported you from 7th and Macdonald? Who drove you back to the Richmond Police Department?

A Mr.—Agent Billingsley rode along for one, and the fellow—I think his name is Jacobs, if I'm not mistaken. This fellow told Sergeant Billingsley—he told me, he said, "Consider yourself under Federal arrest."

Q You told us that. Those two officers took you back to the Richmond Police Department.

A Yes, sir.

Q And were you questioned at that time after you were taken there on that day?

A Yes, sir, I was.

Q By whom?

A By the Federal officers.

Q That would be Yates and the—would it be the Chinese officer, Lee?

[fol. 260] A It was Yates and a Chinese officer, and I don't remember—There was another guy standing by; I don't know what department they were working in.

Q Was Mr. Groom, Agent Groom there?

A No, sir, he wasn't there.

Q Billingsley was there. A Yes, sir.

Q Any other Richmond Police officers?

A Yes, sir. It was some more standing around, but I don't know the guy's name. It was some more standing around. Also the booking officer.

Q Did they search your clothing at that time?

A Yes, sir, they did.

Q Did they bring some articles from your car?

A They brought a brown paper bag with an Army discharge, some letters and papers like for here, just a bag of them, with a band—rubber band around it.

Q Where had those articles been?

A They was in the glove compartment. And they brought my hat. I had a brown hat and he taken all the lining and torn it out of it. He brought that up.

Q You had been wearing a hat that day?

A I had on a hat, yes, sir.

Q You generally wear a hat when you're out?

A Yes, sir. Generally all times.

Q Did you have a conversation then with Billingsley at the Richmond Police Department?

[fol. 261] A That day?

Q On the afternoon of your arrest.

A When we got to the station, the Federal officers talked to me first.

Q All right.

A They said— He told Sergeant Billingsley, he said, "This is our case." Sergeant Billingsley said, "All right." "Because we got our money out. If this is the Joe Cooper we're looking for." I told the fellow, "You must have got me mixed up with Joe Cooper that got killed the other day." He said, "Who?" I said, "The dope fiend Joe Pepper from Sacramento, Stockton." He laughed. He said, "You the one." I said, "All right." He said, "We had a list, a paper that long with lines and a number on it."

Q An arrest sheet?

A It was— The paper looked to me about, oh, being about that wide. And it was about that long with numbers on it from bills, the money.

Q Oh, I see.

A And he say, "You may—get over here with this guy." He said, "You know how the Federals work." I said, "I guess so." He said, "You may get over here with this guy and check your money. I don't want to see nothing but fives and tens. Check with him. We call the numbers off; see if he got it." He would call the bills off. He and I both would get on the line and check. I said, "I [fol. 262] know definitely I don't have the money." He said, "No, something must have happened." So they all three went over to the side and talked. They turned around and said, "Well, Merry Christmas, Cooper," like that. (Indicating)

Q Which one was that, one of the Federal officers?

A Yes, sir. The little Chinese guy said, "Merry Christmas." He said, "You're a strong man." So we all laughed and shook hands. He said, "Well, we'll go." I said, "Well thank you guys very much." I said, "Definitely

I knew you had me mixed with the wrong man." I went to put on my watch, my ring back on, and my money back in my pocket. Agent Billingsley said, "Wait a minute. We can put a parole hold on." He told the desk man, "Put a parole hold on." He said he broke his damn watch messing with me. He said, "You won't see Christmas outside." I said, "Shame on you, Sergeant; you can be like the rest of the guys." I said, "I just buy you a watch band for a Christmas present." I thought he was playing. I said, "I thought you just kidding about locking me up." He said, "No, put a parole hold on." So he put a parole hold on me. Well, when standing there during the conversation he said, "Now you can start anying or say anything I don't like." He said, "Be a long time," he say, "before you hit the ground." I said, "Shame on you, Sergeant." I said, "You should be like the rest of the guys; we just apologized." I said, "If I did anything wrong to you, I didn't mean anything wrong." He said, [fol. 263] "You son-of-a-bitch, just say anything I don't like." He said, "How old are you now?" I said, "Sixteen." He said, "I'll turn that Chinaman loose on you or a Mexican guy, either one; you won't have a possible chance." He said, "We got you down to the station, you say anything we like." I said, "I can't fight all you guys." I beg him to uncuff me pretty soon. He uncuffed me a long while after I was there, he uncuffed me. So I said, "Well, I can't fight all you guys, but—" He said, "Well, if you just say anything I don't like, I'll split your damn—don't get smart telling me you're sixteen years of age." I said, "I have respect for your age Sergeant, but" I said, "you most too old to try to split my head." So he got angry and after me and him quarreled a while I said, "I'm sorry, Sergenat; we just apologize, it's just one of those things. I have respect for your age."

Q: Did the Federal officers indicate what they were going to do so far as prosecution?

A: No, sir. Mr. Groom told me the next day, he said, "Cooper, do you remember meeting me?" So he said, "We met yesterday," and said, "You bit my finger." I said, "Well," I said, "I'm very sorry. I didn't know nothing about biting your finger." So he and I shook hands and apologized. So I was teasing Agent Billingsley why

he wouldn't be like the younger man was, apologizing. And that was the conversation between me—Mr. Groom the next day about it. He said, "Well, I won't file this [fol. 264] thing on you Cooper." So when I got relieved I said, "I still apologize, Mr. Groom, if I bit your finger. I didn't know about biting your finger," I said, "because you guys knocked all of my teeth out." I had a handkerchief at my nose and mouth during the time then.

Q You what?

A I had my handkerchief at my nose and mouth, because they were bleeding the next day; for a fact, for the first thirty days I wasn't able to eat anything.

Q The officers talked to you the following day, did they?

A Yes, sir.

Q Was there any discussion concerning marijuana on that second day?

A Yes, sir.

Q And what was that?

A He asked me, he said, "Well, what did you have in your mouth?"

Q Mr. Groom asked you? A Sergeant Billingsley.

Q Sergeant Billingsley.

A Yes. I said, "Well," I say, "it could have been marijuana." I said, "You didn't get nothing." He said, "Listen," he said, "now we want to talk to you and we want to try to act nice with you." He said, "What did you have in your mouth?" I said, "Well, I don't know." I said, "It could have been marijuana; it could have been breath pills." I said, "I got a shirt pocket full of breath [fol. 265] pills." He said, "Do your parole officer like you to take them?" I said, "Well, for the holidays and the misery he know I am in, he wouldn't mind." I said, "That's why I have those breath pills." I said, "I paid a dollar and a half for them." So he said, "Well, was that marijuana in your mouth?" I said, "Well, yes, it could have been a joint of marijuana." He said, "What else could it have been?" I said, "I don't know. I was half drunk on that Vodka, man." He said, "Do you smoke marijuana?" I said, "I did at the time before I went to the joint in Los Angeles." He said, "How regular?" I said, "Oh, not too—"

Q Wait a minute until that motorcycle goes by. What did you say after Los Angeles?

A I said down in Los Angeles before I went to the joint. He said, "How regular?" I said, "Oh, not too regular." He said, "When was the last time you had some?" I said, "Oh, about '57 or somewhere back in the early fifties." He said, "Well, do you ever get any up here?" I said, "No." He said, "Well, who is selling it around here?" I said, "Oh, I don't know." "How much do they get for it?" I said, "I don't know what they get for it."

Q I don't want to go into that. But that was essentially what was said concerning marijuana.

A Yes, sir.

Q Was he still talking about—I didn't want to interrupt you.

[fol. 266] A—Yes.

Q He said, "Were you able to get any up here?"

A Yes.

Q All right, go ahead.

A I told him, "No." He said, "What do you do, bring some back?" I said, "Oh, are you kidding? You mean to say I drive from Los Angeles with some marijuana?" He said, "Well, I thought maybe you may get you some." I said, "No, sir. I haven't had any since '57."

Q Do you use heroin? A No, sir, I don't.

Q Have you ever used it? A No, sir, never have.

Q You previously have been convicted of a felony, have you not?

A Yes, sir.

Q And that goes back to several years?

A Yes, sir. I got in trouble in 1956.

Q That answers that. You told the officers about that?

A Yes, sir.

Q Did you ever, on December 21st or on any other date, get a phone call from Mr. Green in which he suggested that you meet at Newell's Market?

A No, sir.

Q Did Green on any occasion, either call you or see you and ask for a duce?

A No, sir.

Q Does the expression, duce have any meaning to you?

[fol. 267] A No, sir.

MR. MORAN: I believe that's all.

THE COURT: Cross examination.

MR. CURTIN: Yes, Your Honor.

CROSS EXAMINATION

BY MR. CURTIN: Q For the record, Mr. Cooper, you stated you have been convicted of a felony. And what was that for, sir?

A 501, drunken driving. And rolling marijuana in a blue container box at a party.

Q The 501 was one felony. A Yes, sir.

Q That's the Vehicle Code felony, drunk driving.

A Yes, sir.

Q And the second felony was Section 11,500 of the Health and Safety Code, sale of a narcotic, was it not?

A Yes, sir.

Q Now Mr. Cooper, you stated to his Honor, the Court, on your direct examination that you received some wounds that were causing you to continue to bleed, even the next day. Is that correct?

A Yes, sir.

Q What kind of wounds did you get?

A Oh, I had a busted nose, and I had a cut scar coming down on the lip, and my other lip, my bottom lip was busted. And my teeth, practically all my teeth; they still bothering me. And now the doctor over there tell me [fol. 268] couldn't do nothing about it because he said I have to lose these down here.

Q You said you were even bleeding the next day?

A Yes, sir.

Q Were you bleeding on the day of your arrest?

A The day I got arrested?

Q Yes.

A When the wrestling started, yes, I started bleeding.

Q And so the rest of that day after the arrest, you were bleeding; you were bleeding the next day. Is that right?

A Yes, sir. I bled a couple days straight.

Q Isn't it a fact you didn't have any wounds on your face whatsoever.

A Beg your pardon?

Q I say isn't it true, sir, that you didn't have any cuts or wounds on your face whatsoever.

A Oh, no, sir, I had wounds. I still have wounds now. You can come up and check my teeth here and they all loosened.

MR. CURTIN: May the record show, Your Honor, I'm showing a picture to defense counsel. (Handing)

MR. MORAN: (Examining)

Q (By Mr. Curtin) Now, do you remember them taking a photograph of you, Mr. Cooper, on the day of your arrest?

A Yes, I remember Sergeant Billingsley taken me to the water back in the bathroom and let me put a cold handkerchief to my nose to keep that blood from running [fol. 269] out of my nose and mouth.

Q I'm going to show you this photograph and ask you, sir, if that isn't a photograph of you taken on the day of your arrest. (Handing)

A Of the day on my arrest?

Q Yes, sir.

A I don't know whether this was taken on the day of my arrest, because the day on my arrest they didn't take no photograph; I mean to my notion. I mean, not as I can remember. But I do know that my teeth was all—I was complaining about my teeth because the booking officer at the desk, I complained to him for some kind of medication.

Q Well, isn't that photograph taken the afternoon after all this scuffle and fight that you told us you received wounds to your face?

A That's a photograph of me, sure is true.

Q Isn't that taken on the same afternoon?

A I wouldn't say it was definitely taken on that same afternoon. I can't remember.

Q Do you see the dates on there, the 21st of December, 1961? Is that wrong or right, sir?

A They didn't take a picture of me the 21st of December, sir.

Q This picture wasn't taken of you on that day, sir.

A No, sir. I wasn't questioned and they didn't take any on that date.

Q Isn't that a fact that's the way you looked on the [fol. 270] afternoon after the scuffle, sir?

A Well, I could have— I can't see my teeth inside. That don't mean nothing about my teeth inside.

Q This photograph doesn't show any wounds or cuts on your face at all, does it.

MR. MORAN: The photograph speaks for itself.

THE COURT: Yes.

A It don't show no scratches on there, but it definitely—you can look around my chin, man, and see it's swollen around there.

MR. CURTIN: We'll offer it, Your Honor, as People's next in order.

THE COURT: All right. It will be received in evidence and marked People's Number 11 in evidence.

(Whereupon the photograph above referred to was received in evidence and marked People's Exhibit No. 11.)

Q (By Mr. Curtin) Now Mr. Cooper, you did drive and have in your possession a 1957 Oldsmobile, isn't that right, sir?

A What day, sir?

Q Well, during the time you were living at 536 South 20th Street with your aunt, Mrs. Gulley.

A Was that on the 21st day of December?

Q Yes.

A Yes, sir, I was driving one that day, that afternoon.

Q And to whom was that automobile registered, sir?

A Charles O. Barber.

[fol. 271] Q Where does he live? A Los Angeles.

Q And you had possession of it up here in the Bay Area and he lived in Los Angeles, is that right, sir?

A Well, now, he—he have possession at all times, but he let me drove it, yes, sir; he let me drove it.

Q And you then had the possession to drive it around the Bay Area where you lived.

A What do you mean by around the Bay Area, sir? I didn't get that one.

Q Well, when did Mr. Barber let you have the car?

A. Oh, somewhere—I was down in Los Angeles the 1st of December.

Q And who did you go to Los Angeles with, sir?

MR. MORAN: I'll object. I think it's incompetent, irrelevant and immaterial.

THE COURT: Well, I think it's material under the circumstances under which he's permitted to use the car and how often he drove it. It will be overruled.

Q (By Mr. Curtin) With whom did you go to Los Angeles with, sir?

A With myself.

Q With no one else? A No, sir.

Q You didn't go with a lady? A No.

Q Do you know Freida Pennington?

A Yes, sir, I do.

Q Isn't it a fact you went to Los Angeles with her?
[fol. 272] A When, on the 1st of December, sir?

Q Yes. A No, sir.

Q Have you been to Los Angeles with her?

A Yes, I been to Los Angeles with her.

Q When was that, sir?

A Oh, I don't know, sometime way back.

MR. MORAN: I'll object again as being incompetent, irrelevant and immaterial.

THE COURT: Yes, it will be sustained.

I think you will have to limit the occasion when he got the car.

Q (By Mr. Curtin) Mr. Cooper, you have driven the car, this '57 Oldsmobile, in the months of November and December, 1961, in the downtown area of Richmond, have you not?

A Well, I don't know exactly the date I drove it down there.

Q But you have driven it down there—

A I have driven in Richmond.

Q And you've been down on Macdonald Avenue around 5th Street, 6th Street, and 4th Street during the months of November and December, 1961, in that car.

A I came through 6th Street and it would be very seldom I would be down on 6th Street, very seldom.

Q Wouldn't you have occasion to go down to a shoe shop once in a while?

A No.

Q You never went to the shoe shop—
[fol. 273] A They don't gamble there, sir.

Q What?

A They don't gamble there, sir.

Q They don't gamble there. A No, sir.

Q Is the only reason you go downtown is to gamble?

A I mean, that's the onliest recreation down there to do.

Q I'm sorry. The only what?

A The onliest recreation that the guys do.

Q Haven't you had occasion to go in the Economy Shoe Shop downtown near 5th and Macdonald in the City of Richmond?

A No.

Q You don't know a William Hawkins who worked there in the shoe shop?

A I know Mr. Hawkins 1947 when he was running the Brown Derby.

Q But you hadn't seen him down there in that area?

A Well, I wouldn't—just specifically see Mr. Hawkins down there, because I never paid that much attention. I have seen Mr. Hawkins around Richmond, but just on the particular day, I don't know.

Q Well, I'm going to refer your attention to specifically the 5th of December, 1961. Didn't you drive west on Macdonald and stop at 5th and Macdonald and Mr. Hawkins get in your car and—

A Somewhere—

Q Pardon me.—and you drove him down to 4th and Macdonald and you let him get out of your car and then
[fol. 274] Mr. Hawkins returned to your car again a short time later. Do you remember that?

A It couldn't have been—It could have been around about the 5th that I was in Richmond during the time, but I think, if there was no mistake—I'm not positive about the date—somewhere around about the 5th or 6th or the 7th I came back from Los Angeles. I don't know exactly what date it was. And—But now as far as Mr.

Hawkins, I don't remember riding with Mr. Hawkins. I do remember riding one another, her two sisters and first cousin; I know that—the girl that I was engaged to.

Q Mr. Cooper, were you employed during the month of December, 1961?

A Was I employed?

Q Yes, sir. A No, sir.

Q Did you have a business or occupation during that time?

A No, sir.

Q What was the source of your income?

A I got a check every month.

Q From whom, sir?

A I get one from the State.

Q And what was that for, sir? A Disability, sir.

Q And how long had you been getting that?

MR. MORAN: I'll object to it as being incompetent, irrelevant and immaterial.

THE COURT: Well, I suppose it ought to be limited [fol. 275] to some period around here.

Q (By Mr. Curtin) Let me ask you this: How long had you been living at 536 South 20th Street in the City of Richmond?

A Ever since somewhere around about the month of April.

Q And where had you lived prior to that, sir?

A San Quentin, California.

Q And then when you were released you went directly to Richmond to live, is that correct?

A Yes, sir, I did. But I didn't stay there.

Q You did not stay in Richmond?

A No, sir, not stay.

Q Where did you live, sir?

A I went to Los Angeles.

Q Isn't it a fact, Mr. Cooper, that on several occasions when you went to Los Angeles that you bought heroin down there and you bought marijuana and brought it back to the Richmond area?

A No, sir, I did not.

Q Isn't it a fact that when you went down there you had two shoe boxes and in one shoe box you had a white powder and in the other shoe box you had marijuana.

A Never at no time.

Q Isn't it a fact that you brought those two shoe boxes back to Richmond?

A Never at no time.

Q Isn't it a fact that you had those shoe boxes in the [fol. 276] bathroom of the house there at 536 South 20th Street.

A Never at no time.

Q Isn't it a fact that Freida Pennington saw you on one occasion sniffing the white powder in the bathroom there at 536 South 20th Street.

A No, sir.

Q You know what marijuana is, do you not?

A Yes, I do.

Q Have you given marijuana at any time to anybody around the Richmond area?

A No, sir, I haven't.

Q Never at any time. A No, sir.

Q You haven't given marijuana to Frank Green.

A No.

Q You didn't give some marijuana to Hawkins.

A No.

Q Now, Mr. Cooper, you did swallow something when the officers tried to arrest you, did you not?

A I can't remember exactly whether I swallow nothing or not, but I do know I was eating breath pills.

Q But you can't remember at the time when the officers said you were under arrest, you said, "Okay," and you ducked down and you said, "The marijuana is up on the visor." You don't remember saying that?

A I remember when the officers were tackling me and had me all spread out and had me out of wind, I said, [fol. 277] "Don't kill me." I said, "If you're looking for marijuana, why don't you look in that billfold up there." That's what I told them.

Q Had you carried marijuana up there?

A I said, "Look in my billfold if you're looking for marijuana," in order to keep him from choking me, because I was getting out of breath.

Q Mr. Cooper, then you can't recall going into the right shirt pocket of your coat with your left hand and forcing something into your mouth.

A No, sir, I know definitely I didn't.

Q And sir, you didn't remember forcing the finger of the State Agent Mr. Groom into your mouth.

A No, sir. That seems like impossible to me to force his finger down in my mouth, I mean just take his hand and reach down and put it in my mouth. That seems impossible to me.

Q You didn't chew on it for about fifteen or twenty seconds, and the agent screaming for you to let go of his finger?

A I don't remember at no time chewing on the agent's finger.

Q Didn't you spit blood out afterwards, sir?

A From my mouth all mashed up from all the punchings, the way they was hitting at me, all these guys.

Q But you can't remember at all chewing on the agent's finger.

A No, sir, I don't.

Q Now, Mr. Cooper, on the 21st, you were at your [fol. 278] home, 536 South 20th Street in the morning, the early part of the morning hours, were you not?

A The early part of the morning?

Q Yes. You said you were there about 10:30, as I remember.

A I got home somewhere around about 10:30, something like that.

Q Where had you spent the night, sir?

A At 440-15th Street, practically all my nights there.

Q You spend every night there?

A Practically most of the night, every night.

Q Who lives there?

A That's Miss Juanita. That's my engaged—I mean my future wife, Miss Juanita. The lady that been over here every day. That's the address there (Handing envelope)

Q But you did go back to your auntie's house and the '57 Oldsmobile was there on December the 21st, 1961, before the noon hour, you say? Is that right?

A Around about 10:30, yes, sir.

Q And you are now telling his Honor, the Court, that the car wasn't there, then, around 12:30 on the same day.

A I went there around about 10:30, just like I said. But I didn't waste but a few minutes there.

Q And did you go into the house? A Yes, I did.

Q And where did you leave the car?

A The car—it's parked on the street.

Q Out in front of the house? A Yes, sir.

Q And then you went from there up to 25th—or 26th [fol. 279] and Cutting, you said.

A From the house?

Q Yes. A Yes, sir.

Q You go right by Newell's Market, do you not?

A Yes, sir.

Q Who did you see up at 25th and 26th?

A Mrs. Carr.

Q Edna Faye Carr? A Yes, sir.

Q Is she also someone with whom you were going at the time?

A Yes, sir, I was going to pick her up.

Q She's a friend?

A Yes, sir, she's a friend of the whole family.

Q Now on one occasion or some occasions you've let Edna Faye use your car, that '57 Oldsmobile, did you not?

A No, sir. Her family have one. Her first cousin have one just like it only his is a ninety-eight.

Q Edna Faye has been over at 536 South 20th Street when you were there, was she not?

A Yes, she have been there.

Q On December the 7th, didn't you bring the car home and go in the house and see Edna Faye and didn't Edna Faye come out of the house and get in the '57 Oldsmobile?

A She was in the hospital somewhere around about—to my notion, not being definite about the date—but somewhere around about—The baby was only two weeks old the day she went downtown. She had been home two [fol. 280] weeks. She must have been in the hospital around about the 7th. I'm not positive about it, but I think it was somewhere around about the 7th. I can find out the date definitely, though, what date it was. I think it was about the 7th when she was in the hospital with the baby.

Q Isn't it a fact, Mr. Cooper, that on that day, the 7th of December, you were called by a woman from San Francisco and asked for narcotics, and you said to call you back when she got over in the Richmond area.

A No, sir.

Q That didn't happen? A No, sir, I did not.

Q Isn't it a fact that on that same day you had Edna Faye Carr deliver some narcotics for you to Newell's Market at 23rd Street in the City of Richmond?

A No, sir. At no time.

MR. MORAN: If the Court please, I'm going to object—

THE COURT: I beg your pardon?

MR. MORAN: I'm objecting to that as immaterial and irrelevant.

THE COURT: It will be overruled.

Q (By Mr. Curtin) Now, for the record, Edna Faye has driven that '57 Oldsmobile when you weren't in it, isn't that right?

A I think Edna Faye drove that Oldsmobile twice to my notion downtown; went to pick up some cleaning one day and once at the barber shop. And she drove it from [fol. 281] the barber shop to her mother's house with her mother's—picked her mother up from work, and also she had, oh, three kids in the car and her brother's little kid. She drove from downtown, because it was so late down at the barber shop and I was getting a hair trim, and by the kids being a little sick, she drove them on home.

Q Isn't it a fact, Mr. Cooper, that Edna Faye Carr was using narcotics?

A I don't know. I wouldn't say definitely.

Q You wouldn't say definitely. A No, sir.

Q Isn't it a fact that she was putting it in her arm, sir?

A I wouldn't say it definitely, because I got pretty inquisitive about it myself. In fact, the day I got arrested she and I was arguing about it.

Q About that, sir?

A About stopping and talking to so many guys—I call them tramps. So that's what we was arguing about.

Q You were arguing about the fact that Edna Faye was an addict in narcotics?

A No, I didn't know definitely whether she was an addict or not.

Q But you did know or have some knowledge whether she was using narcotics.

A I was trying to find out about it, was she an addict or not.

Q Did you ever notice her arms?

A No, sir, not exactly. I didn't see no marks on her arms.

[fol. 282] Q Now, you say, Mr. Cooper, that you never even went into Newell's Market lot on the 21st of December, 1961.

A Definitely no.

Q You never drove the car in that lot and stopped the car in there at any time on that day, is that correct, sir?

A I did not, sir.

Q Now who did you see out in North Richmond?

A When, on the 21st day of December?

Q Yes, sir. A Edna Faye Carr's father.

Q Then am I right in saying that you spent the rest of the day with Edna Faye Carr?

A No, sir. I wouldn't say spent the day with her, because I stopped there at their house about an hour and fifteen minutes, and he and I sit in the car and talked while she and her mother and them—they was in the house getting ready, and you know how they were, planning for the Christmas shopping. And I didn't go in the house, because I was mostly in a hurry—you know, waiting on her to come out. So he just come out and joined me—tried to get me to come in—joined me sitting in the car and talked to me, because they was—you know, kind of a pretty funny family. So I waited in the car. So he come out and got in the car, talking to me. We was talking about losing weight. And we sit there about an hour and fifteen minutes. We drove from there on down, because I told her I had to go by the tailor shop to pick up [fol. 283] the pants for those suits that was in the automobile, those three coats in there.

Q Now, sir, you claim that you carried breath pills. What kind of a container would they be in?

A It's a little old plastic container with a cap that they

use in the new medical age now which you mash down inside. It's just about that long. (Indicating)

Q It was a plastic container? A Yes, sir.

Q Pills would be inside?

A That's what they were bought in.

Q Would you keep it in your pocket?

A Well, to keep from carrying that little old plastic thing in your pocket which makes your shirt bulge out, well I just take me a handful of them and put them in my pocket, which all my clothes practically got them in.

Q Isn't it a fact that the object that you swallowed was wrapped in brown paper?

A No, I wouldn't say wrapped in brown paper, sir.

Q What was it wrapped in?

A Those pills wasn't wrapped in anything at all. Now we was eating popcorn coming across the street; I remember that.

Q Well, I thought that you said a little earlier that you don't remember if you swallowed anything or not.

A Well, he claimed that—he thought he seen I swallowed something. I told him a couple of times, I said, "No, we was eating popcorn." I do know that. Because I had just had gone down to the corner and got me a pint. [fol. 284] of Vodka then. That's why I was eaten popcorn.

Q Now when you went shopping, Mr. Cooper, you left the wallet in the car with money in it?

A Yes, sir.

Q Did you have other money than the money you left in the wallet in the car?

A Yes, sir.

Q You keep money in two places?

A I don't generally carry no money in no wallet. My other wallet is nothing but a bunch of papers and it's worn all out and torn up and I just hated to get rid of it—I had it so long. So I bought one of those little old blue plastic looking folders to carry identification cards where I carry my ID's and things in, so they wouldn't get all mashed up in my pocket. So that why I bought that one. But I was hating to get rid of the old pocketbook. Had so many papers in it. I got a whole bag of them.

Q Now, the phone number at the house—

THE COURT: I think we will take our morning recess, Mr. Curtin.

MR. CURTIN: Yes, sir.

(Recess taken)

(After recess)

THE COURT: Let the record show the defendant is present in court with his counsel.

[fol. 285] Just take the witness stand, Mr. Cooper.

Q (By Mr. Curtin) Mr. Cooper, I was asking you about the phone number at the house where you live, 536 South 20th Street in the City of Richmond. That phone number is Beacon 2-1879, is it not?

A Yes, sir.

Q And you have had occasion to use that phone, have you not?

A Yes, sir.

Q And you have had occasion to have your aunt call you to the phone there, have you not, sir?

A Well, not—She may have called me to the phone because my girlfriend calls me quite a bit. In fact, three girls call me.

Q Now Mr. Cooper, you stated that your recreation was gambling in downtown Richmond.

A Yes, sir.

Q And where would you get the money to use for gambling, sir?

A Well, I got two checks one day and about three days later I got one more check. Besides that I got money from my aunt, and also I has—I has quite a few relatives.

Q And isn't it a fact that the money that you get to use for gambling, you get from selling narcotics?

A No.

Q When you went to Los Angeles on the occasions you've told us about, you gambled down there, did you not?

A Yes, I did.

[fol. 286] Q Isn't it a fact you lost large sums of money down there?

A No, sir, I won some.

Q How much would you win, sir.

A I won from between around about six to eight hundred dollars.

Q And isn't it a fact that on some occasion you've lost as high as a thousand dollars and two thousand dollars?

A No, sir, I win \$2700.00 and lost it all back but fourteen hundred once, I remember, and that was in August, if there's no mistake, August.

Q August of 1961? A Yes, sir.

Q You lost \$2700.00. A I won \$2700.00.

Q I'm sorry. And then you—you say you lost some and then won it back. How much did you lose?

A I say I lost some of it back.

Q How much did you lose back?

A Oh, I lost it all around about twelve or fourteen hundred dollars.

Q Would you carry money around in a brown paper bag?

A Never have, sir.

Q Isn't it a fact you had a brown paper bag in your automobile?

A Yes, sir, with some papers, discharge, and letter, it was in the glove compartment.

Q Isn't it a fact when you went to Los Angeles you had a brown paper bag filled with money?

A No, sir, at no time.

Q Isn't it a fact that Freida Pennington saw that [fol. 287] brown paper bag filled with money?

A No, sir.

Q Isn't it a fact she saw you gambling down there?

A I won't say she didn't see me gambling for a fact, because she did, because she sat there all day and all night there in the gambling shack.

Q The gambling would go on all day and all night, is that right?

A Yes, sir.

Q And isn't it a fact that she saw you on one occasion lose \$2,000.00 down there?

A No, sir. I haven't—

MR. MORAN: Just a minute. I'm going to object to this line of questioning as incompetent, irrelevant and immaterial.

THE COURT: Yes. I don't think there's going to be any tendency to prove any connection with narcotics. It will be sustained.

Q (By Mr. Curtin) Just for the record, Mr. Cooper, you have had large sums of money in your possession.

A You mean since—during the year of '61?

Q Yes, sir.

A Highest I ever had at once was \$2700.00 in a game.

Q And this was from the time you got out of San Quentin—

A Yes, sir.

Q —and while you were living in the City of Richmond.

[fol. 288] A Well, no, that was in Los Angeles. I was down there about, oh, a little better than five weeks all together.

Q Now, you did tell Sergeant Billingsley that you had used marijuana.

A Yes, sir, back in—in the forties and also I think—well, before I went to the joint in '57.

Q And isn't it a fact that you had used marijuana since you got out of San Quentin in March of 1961?

A No, sir, I told Sergeant Billingsley I had been drinking Vodka.

Q Isn't it a fact that you smoked marijuana in the bathroom of your aunt's house, at 536 South 20th?

A No, sir. I wouldn't go nearby there.

Q Well, isn't it a fact that Freida saw you in there smoking a joint?

A She never been in the house but twice.

MR. MORAN: If the Court please, I'm going to object. He's not being charged with smoking marijuana. Perhaps he should have been. My objection is that it's irrelevant.

THE COURT: Yes, I think so. It will be sustained.

MR. CURTIN: Your Honor, then that's all the cross examination I have of this witness.

REDIRECT EXAMINATION

BY MR. MORAN: Q Mr. Curtin referred to the violation of 11,500 as a sale of marijuana. Did that involve a sale of marijuana?

[fol. 289] A No, sir. I was at a party for Sugar Ray Robinson, and those show girls was dancing they had on the show. I was at a party and I just got out of the hospital, and they came and got me.

Q Well, without going into all that, did it involve passing a box of marijuana at a party?

A No, sir. I pushed a box.

Q All right.

A So that's why they considered it was a sale of narcotics.

Q We showed the picture of your aunt's home taken from a distance, and the officer described—one officer described it as white and the other as a light color. I think it's shown in People's Exhibit Number 8. What color is that house?

A It's dark redwood and brick.

Q What do you mean it's dark redwood? Was it painted or stained?

A Yes, sir, it was painted and stained, because it hadn't been too long we painted it. It's a darker color than that cushion in that chair there.

Q The dark brown cushion?

A Yes, sir, the dark brown cushion.

Q And red brick.

A Yes, sir. It's mostly reddish looking. I forget what color you would call that.

Q And it was that way during December of 1961?

[fol. 290] A Yes, sir. Been that way all the time.

MR. MORAN: That's all.

RECROSS EXAMINATION

BY MR. CURTIN: Q Well Mr. Cooper, I'm not sure that I understood your answer to Mr. Moran's question about what you were convicted of. You were convicted of Section 11,500 of the Health and Safety Code in the County of Los Angeles, were you not, sir?

A Yes, sir.

Q And wasn't the fact that you were convicted of a sale at that time on—upon or about December the 3rd, 1957?

A Beg your pardon.

Q I'll rephrase the question. Isn't it a fact that you were convicted of a sale as charged by that section at that time, December the 3rd, 1957, of Section 11,500 of the Health and Safety Code.

A Yes, sir. That automatically is called a sale because I pushed a box, and automatically it had to be a sale, because the guy said—the agent was sitting at the table and he said, "You all pass the box down." I said, "Man, you all get your own box." We was eating down at the end of the table. So the girl from New York what was running that house—had the party, she said, "Well, push the box; just slide the box over." So automatically that goes upon a sale.

Q It was a sale, then.
[fol. 291] **A** Well, they put it down as a sale. Never was a sale. They just called it a sale because I pushed the box.

MR. CURTIN: That's all, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. MORAN: **Q** Did you receive any money for that?

A No, sir, I did not.

Q Did you receive anything of value for that?

A No, sir, I did not. I was visiting a party.

MR. MORAN: That's all I have.

MR. CURTIN: Nothing further.

MR. MORAN: The defense will rest, Your Honor.

THE COURT: Mr. Curtin.

MR. CURTIN: At this time, Your Honor, the People are in the position of moving the Court to file an amended indictment in this case, charging two prior convictions of a felony, one of the same division with which he is presently charged, the defendant now having admitted them in the presence of the Court on the witness stand.

THE COURT: Mr. Moran.

MR. MORAN: May I see—

MR. CURTIN: Yes. (Handing document)

MR. MORAN: (Examining)

THE COURT: Do you have the information about these priors, Mr. Curtin?

MR. CURTIN: Yes, Your Honor.

THE COURT: I have this in mind: He's admitted two [fol. 292] priors, and says one was 501 and one was sale of marijuana. I suppose that's sufficient, but I still have a feeling that technically it looks a lot better if the information from the prison authorities—from the Court's records were available. They should be put in.

MR. CURTIN: Yes, Your Honor. I have, for the record, shown that to Mr. Moran. I will show it to him again when he's through examining the indictment.

At this time, Your Honor, then the People would offer in evidence certified photostatic copies of the records of the Adult Parole Division in regards to Joe Nathan Cooper, showing a prior conviction. We will offer them—

THE COURT: Suppose I continue this. If you're going to file an amended information—And under the circumstances the motion will be granted; you will be permitted to file an amended information. However, I suppose he still has to be arraigned on it. I suppose no prejudice could result in view of the fact that he's admitted these, but—

MR. CURTIN: Well then, at this time we would offer first the amended indictment, Your Honor, and move the Court to file the amended indictment on behalf of the People.

THE COURT: The motion will be granted and the amended indictment will be ordered filed.

MR. CURTIN: May the record show I am giving Mr. Moran a copy.

[fol. 293] THE COURT: Let the record show that the defendant has been handed a copy thereof.

Would you arraign the defendant, Mrs. Clerk, on the amended indictment.

MR. MORAN: May we have just a moment.

THE COURT: Surely.

(Mr. Moran conferring with defendant)

THE COURT: Would you like to take a recess so you could discuss this with your client?

MR. MORAN: May I have a short recess?

THE COURT: Surely.

All right, we'll take a short recess.

(Recess taken)

(After recess)

THE COURT: Mrs. Clerk, you will arraign the defendant on the amended information.

THE CLERK: Do you waive the reading?

MR. MORAN: We'll waive the reading.

THE COURT: Let the record show that the defendant waives reading of the information.

THE CLERK: You are charged in the amended indictment by the name of Joe Cooper? Is that your true name?

DEFENDANT COOPER: Joe Nathan Cooper.

THE CLERK: Joe Nathan Cooper.

DEFENDANT COOPER: Yes, ma'am.

[fol. 294] THE CLERK: How do you plead to the offense charged in the amended indictment in Count One?

THE COURT: It's identical with the original indictment.

Is it not, Mr. Curtin?

MR. CURTIN: Yes, Your Honor.

THE COURT: Except for the priors.

MR. CURTIN: Except for the two priors.

THE COURT: Count One is the narcotic violation.

DEFENDANT COOPER: Not guilty.

THE COURT: All right. Let a plea of not guilty be entered to the offense charged in Count One of the indictment.

THE CLERK: How do you plead to the offense charged in the amended indictment, Count Two?

DEFENDANT COOPER: Not guilty.

THE COURT: Let a plea of not guilty be entered to the offense charged in Count Two of the amended indictment.

THE CLERK: Do you admit or deny the prior convictions charged in the County of Los Angeles, Violation of Section 11,500 of the Health and Safety Code?

DEFENDANT COOPER: Yes.

THE COURT: You admit that prior conviction.

Let the record show that he admits the prior conviction of a violation of Section 11,500 of the Health and Safety Code in the Superior Court of the State of California in [fol. 295] the County of Los Angeles.

THE CLERK: Do you admit or deny the prior conviction in the County of Los Angeles of Violation of Section 501 of the Vehicle Code of the State of California, a felony, drunk driving.

DEFENDANT COOPER: I admit it.

THE COURT: Let the record show that the defendant admits the prior conviction of felony, Violation of Section 501 of the Vehicle Code in the Superior Court of the State of California in and for the County of Los Angeles.

All right. Anything—

MR. CURTIN: Nothing in rebuttal, Your Honor.

THE COURT: Did we admit in evidence the record of the—

MR. CURTIN: No, Your Honor. We will offer those.

THE COURT: Well, in view of—

MR. CURTIN: It's not needed.

THE COURT: No.

All right. Will there be any rebuttal?

MR. CURTIN: No rebuttal from the People, Your Honor.

THE COURT: The People rest.

MR. CURTIN: The People rest.

THE COURT: Mr. Moran.

MR. MORAN: The defendant rests.

THE COURT: Well, gentlemen, there's no reasonable [fol. 296] doubt, or otherwise in my mind, that the phone call was placed as testified and that the officers were outside the defendant's aunt's home; that he answered the phone there; that he did go over to Newell's Market and was identified there and met Mr. Green and Mr. Green thereafter did turn over the bindles in evidence to Agent Lee and they were found to be heroin. And the Court will find the defendant guilty as charged in the indictment of violation of Section 11,501 of the Health and Safety Code as charged in the indictment.

Very little time has been spent with the second charge in the amended indictment, but I suppose that under the

circumstances disclosed here that the officers had a reasonable ground to believe that the defendant was trying to destroy evidence and they had a legal right to try and do that. And in the course of doing that, the defendant, while he may not have intended to, put Officer Groom's finger in his mouth—I think he probably didn't intend to do it. I'm satisfied when it got there that he thereafter applied force. But I somehow or other have a feeling I'm glorifying this thing by making it an intent to do great bodily injury. Of course, the fact of the matter is that the finger was fairly badly injured. There's been some considerable period of time in healing.

Do you want to be heard on that, Mr. Moran, on the Count Two of the amended indictment?

[fol. 297] MR. MORAN: Well, I think it has been apparent here. The doctor has described it.

THE COURT: I think he committed the acts, and I think the officers, under the circumstances, were justified in believing that he was trying to destroy evidence and were justified to trying to stop him. But—

MR. MORAN: Well, that may—

THE COURT: —it just appears from the view I take of it that I have to be rather technical to—

MR. MORAN: Certainly there was no intent evidenced to commit mayhem on this officer.

THE COURT: Well, I don't think that's exactly what's required. I think he assaulted the officer. I think he bit on his finger when it got there all right, and I think he did it with the intention of hurting him.

Great bodily injury does not seem to me to be superficial lacerations, which was the only medical information that we received on this. I suppose he could have bit his finger off. But I don't think that was the intent. I think he intended to hurt him all right.

MR. MORAN: I think that's about it.

THE COURT: Do you want to be heard on that count, Mr. Curtin?

MR. CURTIN: Yes, Your Honor. The matter of mayhem was not charged because that would have been much more difficult to sustain.

[fol. 298] THE COURT: Yes, he has to—

MR. CURTIN: Likely to produce great bodily injury. And the evidence shows, Your Honor, that the officer was trying to withdraw his finger from the mouth.

THE COURT: Oh, I have no doubt that the act was unlawful. I haven't any doubt at all.

MR. CURTIN: Actually, the defendant continued to apply the force which resulted in the injury to the officer, and it was on that basis, Your Honor, that this section was charged. And it's the means that were used. The fact that he was using his teeth in such a vicious manner was the basis of the charge, and that the finger was badly lacerated and is still receiving treatment to this very day of trial.

MR. MORAN: There's one other point. I'm sure the Court has it in mind. The officer obviously initiated this situation by trying to recover something.

THE COURT: Yes. But I think he had a right to, Mr. Moran. I think under the circumstances he had a right to try and prevent him from destroying evidence.

MR. MORAN: Let's assume that.

THE COURT: Yes. I think that he was responsible for his finger getting there.

MR. MORAN: Getting in the mouth.

THE COURT: Right.

[fol. 299] MR. MORAN: That's right. I mean, it isn't a situation where the defendant went after him and grabbed his hand and said, "I'm going to cause great bodily harm."

THE COURT: I think after it happened, I think that Mr. Cooper bit down on it and I think he did it with the intention of hurting the officer, and it's all part of a scuffle, melee or whatever you want to call it.

MR. MORAN: I think that's exactly it. There were a number of officers around, and a great to-do resulted. I can't see the essential intent.

THE COURT: Well, my feeling is that the second count—If you want to submit any authorities or want to argue it further, I'll listen to you, of course, but I think on the second count I would find him guilty of the lesser and included offense of simple assault.

Under the circumstances here, I think I have to be pretty technical to find him guilty of a felony. Peculiarly

enough, the defendant in these circumstances is rather in a defensive attitude at the time that the thing happened. Of course, even if that's true, where the person defends himself, if he becomes an aggressor he then violates the law, too. I think that's what happened here.

Well, that will be the finding. The Court will find the defendant guilty of assault, a lesser and included offense [fol. 300] to that charged in the second count of the indictment.

How about a time for receiving the report and pronouncement of judgment, gentlemen? Can you agree on a date?

MR. CURTIN: Whatever is suitable for Mr. Moran.

THE COURT: Would a Monday afternoon be all right? As you know, I have the juvenile calendar on Monday mornings.

MR. CURTIN: Yes, that's fine with the People.

THE COURT: Would a Monday afternoon be agreeable?

MR. MORAN: Yes, it would be.

THE COURT: I guess it would probably be the 7th before we could get a report, wouldn't it? That's beyond the statutory time.

Would you waive it, Mr. Moran?

MR. MORAN: I'm sorry—

THE COURT: I think the 7th would probably be the earliest we can get a report from the probation officer. That's beyond the statutory time. Would you waive it?

MR. MORAN: That's satisfactory.

THE COURT: Is that date agreeable?

MR. MORAN: Yes.

THE COURT: All right. The matter will be referred to the probation officer for a report and recommendation to the Court, and the Court will fix May the 7th, 1962 at [fol. 301] the hour of 1:30 p.m. as the time for receiving the report of the probation officer and the pronouncement of judgment.

MR. CURTIN: Thank you.

THE COURT: The defendant is in custody, I take it.

MR. CURTIN: Yes, Your Honor.

THE COURT: He will be remanded to the custody of the sheriff.

[fol. 302]

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY OF
CONTRA COSTA

No. 7744

THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF

—vs—

JOE COOPER, DEFENDANT

REPORT AND RECOMMENDATION OF PROBATION
OFFICER, JUDGMENT, AND SENTENCE.

Before Hon. Norman A. Gregg, Judge of the Superior
Court, County of Contra Costa, State of California,
Dept. No. 4, May 7th, 1962.

APPEARANCES:

JOHN A. NEJEDLY, District Attorney, Contra Costa
County,
Hall of Records, Martinez, California,
By: MATTHEW S. WALKER, Deputy District Attor-
ney;

Attorney for the People;

ROBERT H. MORAN, Attorney at Law,
Financial Center Building,
Oakland, California,
Attorney for the Defendant.

[fol. 302a]

MAY 7, 1962

PROCEEDINGS

MR. WALKER: If the Court please, Action 7744, Peo-
ple of the State of California against Joe Cooper.

May the record show that the defendant is present in
court together with his attorney, Mr. Robert H. Moran?

THE COURT: The record may so show.

MR. WALKER: This is the time and place set for hearing the report and recommendation of the Probation Department in this matter, Your Honor, and for sentencing.

THE COURT: Have you received a copy of the report, Mr. Moran?

MR. MORAN: Yes, I have, and the defendant has, also.

MR. WALKER: If the Court please, I believe this report is in error in one respect. This states that there was a jury trial. I believe it was waived and there was a Court trial, if I am not mistaken.

THE COURT: Yes, it was.

MR. WALKER: May we amend, then, the probation report in that respect to reflect that it was a court trial rather than a jury trial.

THE COURT: Where does it state that?

MR. WALKER: It says, "Guilty by jury trial" in the probation report.

PROBATION OFFICER: Bottom of page four, Your Honor, evaluation. Next to the last line. It should be [fol. 303] "a court trial."

THE COURT: Oh, yes. Well, I don't think it need be amended. The fact is, it was a Court trial.

Do you have any comment to make, either on the facts stated therein or the recommendation, Mr. Moran?

MR. MORAN: No, I haven't, Your Honor.

THE COURT: Mr. Walker.

DEFENDANT COOPER: Your Honor, I'd like to interrupt, please.

THE COURT: Mr. Cooper.

DEFENDANT COOPER: Your Honor, I feel that it would have showed a better picture on both sides of this case, Your Honor, if I had been granted the opportunity to present my witness as well as, so the District Attorney did—if I had as well so as the Prosecuting Attorney had. I had witnesses, Your Honor, been put in ever since this case has been arranged. I feel like if I was granted the opportunity to present my witness that it will show a clearer picture, Your Honor, on both sides of the case.

And I feel like that I had a lack of due process of law, Your Honor. And I feel like that if—it's more facts—is connected in this case, Your Honor, that I would like to have been brought out, and maybe it would have been a better judgment. You could analyze and seeing it better.

But if I was granted, Your Honor, the opportunity to present my witness and I was found unwillingly, Your [fol. 304] Honor for the Court to incarcerate me for the rest of my life with hard labor in order to prove, Your Honor, that I would be willing to pay by debt to society from the beginning to the end, Your Honor, I'd rather be incarcerated for the rest of my life and punished with free hard labor from the sweats of my brow from the beginning to the end. I'd be willing to pay my debt to them if I was found otherwise.

THE COURT: Well, you had the opportunity to present any witnesses you wanted to, Mr. Cooper. I assume that Mr. Moran exercised his judgment in deciding which ones to present and which ones not to present. Mr. Moran is a very able and experienced lawyer. I assumed that he exercised his discretion properly.

DEFENDANT COOPER: But he taken the case a little late, Your Honor, and whether he seen that the witness' names and address, but I brought them over, Your Honor, and I consulted him the last day of the trial—if I could contact my witness, he said, "The Judge won't go for it because we don't have time." That's when we was back in the jury room talking. I said, "Well, I would like to ask him if he would allow me to present my witnesses the same as the Prosecuting Attorney had."

THE COURT: Well Mr. Cooper, I think you were very ably represented in this matter, and the record will show that you were very able represented. If unless, I may say so, the Federal Agents, State Agents and the [fol. 305] Richmond Police and all out there who testified as to what happened are called complete falsifiers, or are completely mistaken, I don't know what witnesses could have been produced that you are referring to.

DEFENDANT COOPER: Well, the thing about it, Your Honor, I had witnesses, I had five or six witnesses

that was there and they was willing to testify and come up and volunteer to give free testimony in this case. So I feel like that I should have been—entitled to subpoena them and had them there, which their names and addresses were given at the beginning, but Mr. Moran, after the case was moved from Mr. West over to Mr. Moran, he taken at little rate. But I don't know whether he subpoenaed them or made an effort to. However, I consulted him in the jury room about that.

MR. MORAN: If the Court please, so the record won't be confused, I had a number of conversations with Mr. Cooper that commenced in January of this year, and the availability of witnesses was discussed at that time, and subsequently—

THE COURT: Mr. Moran, it was not the Court's intention to flatter you. I think he was very ably represented. I think the transcript will show that.

Do you have any comments at all to make, Mr. Walker?

MR. WALKER: No, we will stand on the record in this matter, Your Honor. The court process was available [fol. 306] to the defendant at all times.

THE COURT: All right. Let the record show that the defendant was convicted of a violation of Section 11,500 of the Health and Safety Code. This is the time fixed by the Court for receiving the report and the pronouncement of judgment.

It will be the order of the Court that probation be and the same is hereby denied.

Do you have any legal cause to show, Mr. Cooper, why judgment of the Court should not now be pronounced against you?

DEFENDANT COOPER: Well—Your Honor, no more than what I just got through—the point I was trying my best, to the best of my knowledge to explain to you about, that I was asking for the opportunity to present my witnesses, as well so the Prosecution had on their side. And I feel like, Your Honor, that I was lacking due process of law.

THE COURT: Well, all right. There being no legal cause why the judgment of the Court should not be pronounced, it is the judgment of this Court that the de-

fendant be punished for the offense of which he stands convicted by being incarcerated in the State Prison for the term prescribed by law on the violation of Section 11,501 of the Health and Safety Code, and by imprisonment in the County Jail for a period of one year on the assault count.

And it will be the further order of the Court that the [fol. 307] sentences on these two counts run concurrently with each other.

He was already on parole, gentlemen. Do either of you wish to be heard on whether the judgment herein should run concurrently or consecutively with the term he is now serving?

MR. MORAN: If the Court please, the sentence imposed will be substantial. I believe the Court has had the background on the matter for which he's been placed on parole. I think that certainly substantial justice would be done if the sentences ran together on the count.

THE COURT: Do you have any comments, Mr.—

MR. WALKER: Well, if the Court please, we can only reflect on the fact that this record as shown in the probation report here is pretty tremendous and we have prior convictions shown here. We feel that under these circumstances, that the sentence should be made consecutively, any sentence that he has to serve.

THE COURT: Well, the funny thing, Mr. Cooper—I hate to say this—but I don't—I don't think that you see two sides of the situation at all. You apparently don't feel that you owe anything to society at all in the way of working and behaving yourself. While a lot of these are merely records of suspicion and investigations, the fact remains that people don't get picked up all the time, don't get investigated for offenses unless, at the very least, the [fol. 308] company they keep or the things they're doing are such as to cast suspicion upon them. And I just don't—

DEFENDANT COOPER: It is mostly what you call, Your Honor, that's—like a row, investigation, like a row, picked up on suspicion.

THE COURT: Well, it isn't one place. It's Martinez, Oakland, Yuba City, Eureka, Los Angeles and all over.

Every place you get you're in an element where the police are looking down your neck.

DEFENDANT COOPER: Well, they wasn't necessarily looking down my neck, Your Honor. It was just like I said, sort of a dragnet. It was rows.

THE COURT: Well, I don't know what the balance of his term is, but as Mr. Moran has pointed out, the sentence on this offense is going to be a long one. And I rather feel it would just be gilding the lilly, Mr. Walker, to add it on, having in mind what the minimum sentence on this one is.

All right. It will be the further order of the Court that the judgment pronounced herein on both counts will run concurrently with the term the defendant is currently serving.

And in giving you this break, Mr. Cooper, I don't think you deserve it, but it would be my hope that someplace along the line you get the idea that society has been a lot better to you, really, than you deserve. And that includes your incarceration. The State has sent you a check dur-[fol. 309] ing the time you were on parole and even your disability came about due to your own misconduct. You have my sympathy, of course, but even that came about in connection with an accident in which you were charged with a crime.

All right, the defendant will be remanded to the custody of the Sheriff.

MR. MORAN: If the Court please, I don't know whether we can take it up at this time, but the defendant told me a few moments ago that he would like to take certain procedures for an appeal and review and so forth and that he wished time and an opportunity to secure other counsel—

THE COURT: Well—

MR. MORAN: I would make the motion that I be allowed to withdraw at this time.

THE COURT: Well, yes, I think so.

(The Court and Mr. Walker conferring)

THE COURT: Well, might I suggest this, Mr. Moran—perhaps I'm imposing on you, but he has ten days with-

in which to file a notification of appeal. If you don't have any objection, I'll type out the notice and you can sign it as his attorney. Or if you—If it doesn't make any difference to you, Mr. Cooper, I'll have it typed out and you can sign it yourself. No great formality is required. All you have to do is put the caption of it and say, "I hereby appeal from the judgment entered this date."

MR. WALKER: Yes. Apparently the maximum on [fol. 310] the assault, misdemeanor, is six months. That's not very important, perhaps, under all the circumstances. The judgment of one year in the County Jail will be ordered stricken, and on the assault count he will be ordered incarcerated in the County Jail for a period of six months.

MR. WALKER: Thank you.

THE COURT: Do you have any objection to signing it, Mr. Moran?

MR. MORAN: No, I don't.

THE COURT: Well, then, upon the signing of the notice of appeal, Mr. Moran will be discharged as attorney of record for the defendant.

[fol. 311]

[Reporter's Certificate to foregoing transcript omitted in printing]

[fol. 312]

Judge's Certificate to foregoing transcript omitted in printing]

[fol. 313]

1/CRIM. NO. 4233

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF CALIFORNIA, FIRST APPELLATE
DISTRICT, DIVISION ONE

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF AND RESPONDENT

vs.

JOE NATHAN COOPER, DEFENDANT AND APPELLANT.

EXCERPTS FROM RESPONDENT'S BRIEF—
Filed October 30, 1964.

* * * *

[fol. 314]

II

EVEN ASSUMING THE SCRAP OF PAPER WAS
ILLEGALLY SEIZED, ITS ADMISSION WAS NOT
PREJUDICIAL ERROR

It has long been the law in California that the admission of illegally seized evidence in a trial will not require reversal unless the appellate court,

"[A]fter an examination of the entire cause, including the evidence, is of the opinion that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error. . . ." Cal. Const. Art. VI, § 4½; *People v. Watson*, 46 Cal.2d 818, 836 (1956).

The reasoning behind such a rule was stated recently by Chief Justice Traynor in *People v. Parham*, 60 Cal.2d 378 (1963), *cert. denied*, 377 U.S. 945 (1964):

"Unlike involuntary confessions [which are treated as exceptions and in a class by themselves], other illegally obtained evidence may be, as in this case, only a relatively insignificant part of the total evidence and has no effect on the outcome of the trial. To require automatic reversal because of its admission

is to lose sight of the basic purpose of the exclusionary rule to deter unconstitutional methods of law enforcement. (Citations omitted) Unless we were to [fol. 315] take the unprecedented step of holding that the state must be penalized for violating a defendant's constitutional rights in securing evidence by conferring an immunity upon him (citation omitted), we must consider the deterrent effect of the exclusionary rule not as a penalty, but as derived from the principle that the state must not profit from its own wrong. (Citations omitted.) The state does not so profit when erroneously admitted evidence does not effect the result of the trial. . . ." 60 Cal.2d at 385-86.

The most recent affirmations of this rule may be found in *People v. Cruz* (Cal.Sup.Ct. Crim. No. 7985, October 29, 1964), and *People v. Burke, supra*, 61 A.C. 633 (1964).

The facts of the case at bar are strikingly similar to those in *Parham*, and compel the same result. In *Parham*, the illegally seized evidence was the masticated fragments of a pink check. In our case, the evidence (assuming without admitting that it was illegally seized) was a scrap of brown paper. The pink check in *Parham* was highly relevant since a similar pink check was used in each of three recent bank robberies. In our case, the brown paper was also highly relevant since it was of the same type used to wrap the two bindles of heroin sold to [fol. 316] the informer, and was also similar to the wrapping on the object Cooper jammed into his mouth and swallowed.

The third major similarity between the two cases is that the other evidence in *Parham* pointed overwhelmingly to the defendant's guilt, and the pink check was merely cumulative of other undisputed evidence in the record. The following summary of evidence demonstrates that the same may be said of the instant case:

1. State agents overheard a phone conversation between an informant and appellant in which the latter agreed to sell a "deuce," or two bindles of heroin, to the informer.

The informer was searched and provided with marked money.

2. Other agents who knew Cooper observed him leave his residence shortly after the phone call, take something from the trunk of his car, and drive off.

3. Six officers and the informer converged on the meeting place and saw Cooper drive up in the car observed earlier.

4. The informer approached the car and remained in conversation with Cooper for 2-3 minutes, observed continually by the six officers who were stationed at various points.

5. Cooper drove off and the informer, under constant surveillance, immediately returned to the agents' car where he handed over two bindles of heroin.

[fol. 317] 6. The informer had been searched before the buy at the police station, and was searched again immediately after turning over the heroin. The marked money which had been furnished him after the first search was not found.

7. About two hours later, five officers spotted Cooper's car and staked it out. Cooper returned and was apprehended as he started to enter it.

8. Immediately after being placed under arrest, Cooper leaned over, peered in the car window, and stated that marijuana was over the sun visor. When the officers stooped to look, he jerked one hand free, reached in a shirt pocket and placed a brown object fitting the description of the bindles of heroin in his mouth.

9. Cooper admitted to police that the object he swallowed was a marijuana cigarette wrapped in brown paper.

Petitioner argues that the case of *Fahy v. Connecticut*, 375 U.S. 85 (1963), somehow affects the rule stated in *Parham* and recently reaffirmed in the *Burke* and *Cruz* cases. However, in *Fahy*, the Supreme Court merely reversed the state court's conclusion that certain illegally seized evidence had not prejudicially affected the defendant's trial. Even though the Supreme Court was confronted directly with the issue of the constitutionality of the Connecticut "harmless error" rule, it avoided that

[fol. 318] issue expressly. Therefore, *Fahy* represents no more than an evidentiary review of a state court conviction,⁴ and is limited to its facts.

We submit that there will be no "miscarriage of justice" in the case at bar, and that the judgment should be affirmed.

* * * *

⁴ The four dissenting justices felt that even here the majority exceeded its proper appellate function, since there was some substantial evidence in the record in support of the judgment.

[fol. 319]

IN THE DISTRICT COURT OF APPEAL OF THE
STATE OF CALIFORNIA, FIRST APPELLATE
DISTRICT, DIVISION ONE

1 Criminal 4233

THE PEOPLE OF THE STATE OF CALIFORNIA,
PLAINTIFF AND RESPONDENT

v.

JOE NATHAN COOPER, DEFENDANT AND APPELLANT

OPINION—May 24, 1965

Defendant was charged in an indictment with selling heroin (Health & Saf. Code § 11501) and in a second count with assault by means of force likely to produce great bodily injury. (Pen. Code § 245.) An amended indictment filed during the trial charged the above offenses and in addition charged two previous convictions of felonies. Defendant pleaded not guilty to each count of the indictment and amended indictment and admitted the two previous convictions. The court sitting without a jury found defendant guilty of violation of Health and Safety Code section 11501 as charged in count one of the amended indictment and of the lesser and included offense of simple assault as charged in count two of the amended indictment. Defendant appeals from the judgment of conviction.

On December 21, 1961 at about 5:30 or 6:00 a.m., one Frank Green was arrested in his hotel room in Richmond by state narcotic agents and a Richmond police officer for selling heroin. The officers then took Green to the Richmond Police Department where he was interrogated. He agreed to act as an informer. Green's person and clothing [fol. 320] were thoroughly searched at the time of his arrest and again at the police department at about noon of the same day.

After the second search was completed, Green was taken by state narcotic Agent Armenta and federal narcotic Agent Lee to a public telephone booth in downtown Rich-

mond. He had been furnished with \$20 in marked money. Green and Agent Armenta entered the phone booth together and the latter placed a twin phone as a listening apparatus on the receiving end of the telephone. Green thereupon dialed a number identified as that of defendant's residence. A woman answered and Green asked for defendant, "Joe." When "Joe" answered, Green said, "How about a deuce?" "Joe" said "Yes." Green suggested that they meet at "Newell's," and then the two agreed to meet three right away. Armenta testified that he recognized the voice of "Joe" as being that of defendant. He also testified that in the narcotic traffic the word "deuce" is used in referring to bindles or capsules of heroin. The parties are in agreement that the telephone call took place between 12:30 and 1 p.m. on December 21.

On this date defendant lived with his aunt Mrs. Leona Gulley at 536 South 20th Street in Richmond. Louis Stumpf, a Richmond police officer assigned to the vice detail and one of the officers who had arrested Green early that morning, together with state narcotic Agent Yates, had defendant's residence under surveillance during the time the above telephone conversation was taking place. Stumpf and Yates were in a car on 19th Street just north of Cutting Blvd. and could see defendant's house on 20th Street across the intervening corners which had no structures on them. Stumpf had observed defendant prior to this date and testified that he knew defendant when he [fol. 321] saw him. At about 12:50 p.m., the officer "saw a person that fit the description" of defendant leave defendant's house, walk to a blue 1957 Oldsmobile parked in front, open the trunk of the car, stand at the rear of the car for two or three minutes, then enter the car and drive north to Cutting, east to 22nd Street and then south on 22nd Street.

Newell's Market was located on the corner of 23rd and Cutting. Adjacent to it on the west side, extending westerly along Cutting for the rest of the block to 22nd Street, was a large parking lot. After Green completed the telephone call, Agents Armenta and Lee took him to the vicinity of the market and dropped him off at 23rd and Virginia Streets, just one block north of the market. Armenta left the vehicle a short distance away. Both men

then proceeded to the front of Newell's Market, Green approaching it on the west side of 23rd Street and Armenta on the east side, eventually crossing both Cutting and 23rd Street to the front of the market, which was located on the southwest corner. All during this time Armenta had Green in plain sight and observed that the latter contacted no persons.

Armenta then saw Green walk into the parking lot, saw defendant alone in a 1957 blue Oldsmobile drive into the parking lot from 22nd and Cutting, lost sight of Green for about two or three minutes, and then saw him emerge from the lot and return to the vicinity of 23rd and Virginia Streets where Agent Lee was waiting. According to Armenta, Green was in the parking lot about five minutes all together and after defendant's car entered the lot it was "Just a couple of minutes, one or two" before Green walked out.

[fol. 322] While Armenta was standing in front of the market he observed state narcotic Agent Howard Groom, who, along with Lieutenant Sullivan of the Richmond Police Department, had taken a position in a service station on the northeast corner of 23rd and Cutting, diagonally across from the market. Armenta, from his position in front of the market, saw Groom leave the service station, cross 23rd Street, and proceed to a vantage point on the north side of Cutting opposite Armenta, where Groom could see the parking area.

Groom and Sullivan had observed Green and Armenta making the telephone call and then in a separate car had accompanied them to Newell's Market. They parked in the service station and watched both Armenta and Green approach the market. Groom testified that he then left the service station, crossed 23rd Street and stood on the porch of a house fronting on 22nd Street, from which position he had a clear view of the entire front of the market and of the easterly half of the parking lot. He stated that he could see Agent Armenta and Green at all times and he continued to watch Green. After a short time Green walked out into the parking lot from a position close to the wall of the building. At this point, Groom left the porch of the house and took another position alongside the house where he had a view of the entire

parking lot. He then saw Green "go up to the Oldsmobile, which I recognized as the car that Joe Cooper usually drove, and talk to a man in that car who appeared to me to be Joe Cooper." Green stood by the driver's side of the car for a minute or so and then walked out of the lot and up 23rd Street to Virginia. Groom kept him in sight all the time until he saw Green coming into Agent Lee's view. [fol. 323] Lieutenant Sullivan generally confirmed the activities of Armenta, Green and Groom at Newell's Market. Sullivan, who was parked in the service station, received a radio call from Agent Yates who had seen defendant leave his house. After receiving the message, Sullivan saw the 1957 Oldsmobile pull into the parking lot, saw Green walk over to it and sit in the front seat with the driver for a few minutes and then saw Green walk back toward 23rd Street. He testified that there was only one person in the car when it entered the lot and that "It appeared to me to be Joe Cooper." Sullivan had seen Cooper in a vehicle about two weeks previously. During all of the time Sullivan had Green under surveillance he did not see him contact or communicate with anyone other than defendant.

When Green returned to Agent Lee's car, he handed Lee, in Armenta's presence, a small package and the group thereupon returned to the Richmond Police Department. The package consisted of two white paper bindles of heroin wrapped in brown wrapping paper apparently from a grocery sack. Groom and Sullivan also returned there. A field test was made on the contents of the package, indicating that the substance was possibly an opium derivative. After the test was made the officers attempted to locate defendant's car.

Eventually Agent Groom, federal Agents Yates and Lee and Richmond Police Officers Stumpf and Billingsley participated in placing defendant under arrest. The blue Oldsmobile was finally located at 7th and MacDonald in Richmond at 2:15 p.m. on December 21 and kept under surveillance until about 3:45 p.m. when defendant walked toward the car with a woman and two children. As de-[fol. 324] fendant started to unlock the car door Groom and Yates closed in on him and placed him under arrest. Groom grabbed defendant's right wrist and defendant mo-

tioned and said, "It's there in the car over the sun visor." When asked what was there, defendant bent down and said, "The marijuana cigarettes. . . . But I didn't put them there, someone else put them there."

At this point defendant put his left hand into his right shirt pocket, removed an object wrapped in brown paper and started to put it in his mouth. Both Groom and Yates grabbed defendant's left arm: Groom grabbed the hand, whereupon both hand and package went into defendant's mouth and were stubbornly chewed by defendant. Groom grabbed defendant by the nose, shouted in pain to Cooper to let go of his finger, and after a scuffle, managed to pull his finger out of defendant's mouth. An attempt was made to get defendant to open his mouth while he was still chewing away, but defendant had apparently swallowed whatever had been in his mouth. Defendant was pressed against the hood of the car, placed in handcuffs and taken as a state prisoner to the police station.

Defendant's Oldsmobile was seized and taken into state custody. The car, defendant and his woman companion were searched but the marked money furnished Green was not found. No heroin was found in the car, on defendant's person or in his clothing, or in his room at his home on South 20th Street, which was subsequently searched. Defendant was interrogated at the police station on the day following his arrest. We discuss this matter *infra*.

About a week after defendant's arrest, Agent Groom searched the Oldsmobile at the Beacon Tow Service in [fol. 325] Richmond and found in the glove compartment a piece of brown paper, somewhat larger than the brown paper in which the bindles of heroin were wrapped. This piece of paper, which was about $2\frac{3}{4}$ inches by $4\frac{1}{2}$ inches and appears to be a torn piece of an ordinary brown grocery bag, was admitted in evidence over defendant's objection. On April 4, 1962, Agent Groom made another search of defendant's car at a San Francisco garage where it was then impounded and found one marijuana seed wedged beneath the carpeting on the passenger's side of the car. Defendant's motion to strike Groom's testimony pertaining to the discovery of the seed was denied. The seed itself was received in evidence without objection.

Green, the informer, did not testify. Defendant took the stand in his own behalf and in fact was the sole defense witness. Defendant denied that he sold heroin to Green at Newell's Market, that he met Green there on December 21 or any other day or that he was at the market at any time on December 21. He also denied that on December 21 or any other date he received a telephone call from Green in which the latter suggested that defendant meet him at Newell's Market. Nor did Green at any time call or see him in order to ask for a "deuce," an expression which defendant said was meaningless to him. According to defendant, he was not at home at the time the telephone call in question was made.

Defendant, through his court appointed counsel, contends that his conviction for selling heroin as charged in count one of the indictment must be reversed because (a) illegally seized evidence admitted at the trial contributed to the conviction and (b) at the critical time of the alleged [fol. 326] meeting with the informer, defendant, if he was present, was not represented by counsel although the prosecution had then focused accusatory process on him. He also contends that his conviction for assault under count two must be reversed because (a) he was entitled to use reasonable means to protect himself from a violation of his constitutional right not to have material forcibly extracted from his mouth and (b) an incriminating statement made by him while he was being interrogated without counsel was admitted in evidence. We propose to consider these contentions in the order presented. We will thereafter discuss certain additional arguments urged in a separate opening brief filed herein by defendant in propria persona.¹

¹ On May 21, 1963, defendant's retained counsel having withdrawn with defendant's consent, we appointed counsel for defendant on appeal. On June 18, 1963, on the request of said counsel, we vacated his appointment and on October 10, 1963, we appointed another counsel for defendant. On April 16, 1964, we vacated this second appointment and on May 11, 1964, appointed Michael Traynor, Esq., his present counsel, to represent defendant on appeal. Mr. Traynor did not represent defendant at trial. Defendant's opening brief in propria persona was filed herein on September 18, 1963.

1. *The sale of heroin.*

(a) Illegal search and seizure.

Defendant contends that the search of his automobile by Agent Groom at the Beacon Tow Service a week after his arrest was illegal and that the piece of brown paper taken in the course thereof from the glove compartment was illegally seized. It does not appear, nor do the People claim, that Groom had a search warrant on the occasion referred to and, in the absence of such a showing, we must conclude that he did not have one. (*People v. Burke* (1964) 61 Cal. 2d 575, 578.) The Attorney General also [fol. 327] concedes that he does not seek to uphold the legality of the search on the ground that it was made incidental to defendant's arrest. (See *People v. Ingle* (1960) 53 Cal. 2d 407, 412-413; *People v. Hammond* (1960) 54 Cal. 2d 846, 853; *People v. Torres* (1961) 56 Cal. 2d 864, 866.) Indeed, it seems clear that no such claim could be properly made. (*People v. Burke*, supra, 61 Cal. 2d 575, 579; *Preston v. United States* (1964) 376 U.S. 364, 366-367.)

The Attorney General asserts that the search and seizure were lawful because at the time title to the car had vested in the state. His argument runs as follows: Health and Safety Code section 11611² requires any state peace officer, upon making an arrest for a narcotics violation, to seize any vehicle used to unlawfully transport, keep or conceal any narcotic to facilitate its possession by an occupant thereof and to immediately deliver such vehicle to the Division of Narcotic Enforcement to be held as evi-

² Section 11611 provides: "Any peace officer of this State, upon making or attempting to make an arrest for a violation of this division, shall seize any vehicle used to unlawfully transport any narcotic or to facilitate the unlawful transportation of any narcotic, or in which any narcotic is unlawfully kept, deposited or concealed or which is used to facilitate the unlawful keeping, depositing or concealment of any narcotic, or in which any narcotic is unlawfully possessed by an occupant thereof, or which is used to facilitate the unlawful possession of a narcotic by an occupant thereof, and shall immediately deliver such vehicle to the Division of Narcotic Enforcement of the Department of Justice to be held as evidence until a forfeiture has been declared or a release ordered."

dence in a later forfeiture proceeding. (See Health & Saf. [fol. 328] Code § 11610.³) At the time defendant was arrested and his car seized, there was "overwhelming" evidence constituting "ample cause" for the officers to believe that defendant had violated the narcotics laws and had "unlawfully transported" or "concealed" narcotics in the car. When the car was seized "a proceeding independent from the criminal action was set into motion" and title, though inchoate, vested in the state at the time of the prohibited act. Under the authority of *People v. Broad* (1932) 216 Cal. 1, 4 and *People v. One 1953 Buick* (1962) 57 Cal. 2d 358, 364-365, subsequent final judicial determination of forfeiture merely "dates back" to the commission of the offense. Therefore, such reasoning concludes, since title to the car was properly in the state, its Agent Groom had the right to search it. This conclusion, the People argue, is further buttressed by *Burge v. United States* (9th Cir. 1964) 333 F. 2d 210.

We are not persuaded by the argument. In the first place, the instant record nowhere discloses that forfeiture proceedings were instituted in respect to defendant's car, much less that there was a judgment declaring the car forfeited to the state. Even under the People's cited cases, the title which they invoke depends upon a judicial determination of forfeiture and does not relate back to the time of seizure of the car until *after* such determination. (*People v. Broad*, supra, 216 Cal. 1, 4; *People v. One 1953 Buick*, supra, 57 Cal. 2d 358, 364-365.) The requisite judicial determination is not revealed in this record. At oral argument and in a subsequent letter filed herein, the Attorney General advised us that a judgment of forfeiture of defendant's car was entered on the day following the termination of defendant's trial and invited us to take [fol. 329] judicial notice of such judgment and presum-

³ Section 11610 provides: "The interest of any registered owner of a vehicle used to unlawfully transport or facilitate the unlawful transportation of any narcotic, or in which any narcotic is unlawfully kept, deposited, or concealed or which is used to facilitate the unlawful keeping, depositing or concealment of any narcotic, or in which any narcotic is unlawfully possessed by an occupant thereof or which is used to facilitate the unlawful possession of any narcotic by an occupant thereof, shall be forfeited to the State."

ably of its antecedent proceedings, all separate from those of the instant case. We decline to do so. The judgment referred to was not in existence at the time of defendant's trial and therefore neither could have been, nor was it, availed of by the People to prove the legal basis now asserted for the search of the car. It is true that judicial notice is a kind of evidence which may be relied on to support a judgment or ruling. (Code Civ. Proc. § 1827, subd. 1; *Estate of Fawcett* (1965) 232 A.C.A. 925, 937.) Even assuming that this evidence would have the effect desired by the People under their theory of relation back, the simple fact is that no such evidence existed at the time of defendant's trial so as to furnish such proof.

Although the main thrust of the People's argument is that under a theory of relation back title was vested in the state at the time of the search, thereby justifying the search and distinguishing this case from *People v. Burke*, supra, 61 Cal. 2d 575 and *Preston v. United States*, supra, 376 U.S. 364, the Attorney General also seems to argue that independent of any theory of "vested title," a legal basis for the search can be found in Health and Safety Code section 11611 (see fn. 2, *ante*). The gist of this claim is this: that the section is a mandate to narcotic officers not only to *seize* and *deliver* (to the Division of Narcotic Enforcement) a vehicle but also to determine whether narcotics were unlawfully "kept, deposited or concealed" therein and therefore to search the car. Aside from his reliance on *Burge v. United States*, supra, 333 F. 2d 210, the Attorney General has referred us to no case, nor has any been found, holding that section 11611 [fol. 330] invests state officers with such authority. Nor has he furnished us with any analysis supporting such conclusion as being within the intended scope of the section. Nor does he rely on the line of authority⁴ noted *infra* holding that where officers have lawful custody of a car, articles found therein are also lawfully in their possession without the occurrence of any new seizure.

Both *Preston* and *Burke* held that a search of an automobile made without a warrant but *not* incidental to a lawful arrest failed to meet constitutional standards of

⁴ See fn. 5, *infra*.

reasonableness and that the evidence obtained as a result thereof was inadmissible. In both cases the interdicted search was made on the *same day* as the arrest—in *Preston* “soon after” defendants had been booked, in *Burke* no later than eleven hours after defendant was arrested. In *Burke*, the court held that Vehicle Code section 22651 subdivision (h) and related section 22850 authorizing the removal and impounding of defendant’s car “do not purport to authorize the making of a search.” (61 Cal. 2d at p. 580.) In both cases the automobiles were in lawful custody of the police and in *Burke* there was further statutory support therefor. (Veh. Code §§ 22651, subd. (h), 22850.)

In the instant case, as in both of the above cases, the automobile was in lawful custody of the officers at the time of the search in question, at least under Health and Safety Code section 11611, if not on other grounds. Here the Attorney General concedes that the search of the car made *one week* after defendant’s arrest was not incidental to defendant’s arrest but at the same time, as was done [fol. 331] in *Burke*, invokes statutory authority for the search. In this case the justification is sought in Health and Safety Code section 11611, rather than in Vehicle Code section 22651. Contrary to the claim of the Attorney General, there is no language in section 11611 expressly authorizing, let alone commanding, the search of an automobile for additional evidence that narcotics were “unlawfully kept, deposited or concealed” therein. It has been held that the provisions of the section are merely directory. (*People v. One 1951 Chevrolet* (1958) 157 Cal. App. 2d 301, 305.) Obviously the statute relied upon is part of the enforcement procedure established for the forfeiture of vehicles (Health & Saf. Code §§ 11610-11629). As previously pointed out, it provides for the seizure, delivery and holding for evidence of such vehicles. Absent clear and express language authorizing search, we are not disposed to find therein by implication authority to make a warrantless search and on such a slender and frail basis to sweep aside defendant’s vital Fourth Amendment rights. As we see it, the philosophy of *Preston* and *Burke* is that lawful custody of an automobile does not of itself dispense with constitutional requirements of search-

es thereafter made of it.⁶ We are therefore not persuaded by *Burge v. United States*, supra, 333 F. 2d 210, relied on by the People, which though decided after *Preston* fails to mention that case⁶ and which apart from that consideration is not binding on us in any event even on a federal question. (*Stock v. Plunkett* (1919) 181 Cal. 193, 194-195.)

We therefore hold that the search of defendant's car by Groom was illegal and the evidence obtained as a result therefore, consisting of the piece of brown paper, was inadmissible. (*Mapp v. Ohio* (1961) 367 U.S. 643, 655.)

Can defendant now urge on appeal the inadmissibility of the brown paper found in the glove compartment? The paper in question was part of the same exhibit (People's #4) with the two bindles of heroin and the brown piece

⁶ *Burke* does not discuss, much less express disapproval, of a line of authority holding that, where an automobile is lawfully in the custody of the police, articles contained therein are also in their possession so that any subsequent search of the automobile does not constitute a new seizure of its contents. (See *People v. Ortiz* (1956) 147 Cal. App. 2d 248, 251; *People v. Simpson* (1959) 170 Cal. App. 2d 524, 530; *People v. Nebbitt* (1960) 183 Cal. App. 2d 452, 460-461; *People v. Myles* (1961) 189 Cal. App. 2d 42, 48, cert. denied 371 U.S. 872; *People v. Odegard* (1962) 203 Cal. App. 2d 427, 432; *People v. Garcia* (1963) 214 Cal. App. 2d 681, 684-685; but see *People v. Garrison* (1961) 189 Cal. App. 2d 549, 555-556.) In almost all of the above cases the search was made for the purpose of making an inventory of the contents of the car preliminarily to impounding it, and in any event reasonably contemporaneously with the arrest of its driver. (See *People v. Ortiz*, supra; *People v. Simpson*, supra; *People v. Nebbitt*, supra; *People v. Myles*, supra; *People v. Garcia*, supra.) In *People v. Odegard*, supra, the search was not made in the course of impounding the car but two days after the car was impounded and its occupants arrested. We can only speculate that the court in *Burke* did not expressly disapprove these cases because in the main they equate inventoring preliminary to impounding with reasonable search. Nevertheless we feel that the holding in *Burke*, though containing no express disapproval of these cases, is in conflict with the broad statements found therein to the effect that a search of a lawfully impounded vehicle is reasonable because the police *ipso facto* have possession of all its contents and require no search warrant to uncover and seize them.

⁶ *Preston* was decided March 23, 1964 and *Burge* on May 29, 1964.

of paper in which the bindles were wrapped.' People's Exhibit No. 4 for identification was thereafter offered in evidence during the testimony of prosecution witness Hil-[fol. 333] lard M. Reeves, a criminalist for the Richmond Police Department. At that time, as defendant here concedes, the only objection interposed was that "a proper chain of possession" had not been established in respect to the entire exhibit. The objection was overruled. The Attorney General now contends that by failing to object at trial that the piece of brown paper was inadmissible as the product of an illegal search, defendant is precluded from asserting such objection here.

It is well established that a defendant, who fails to object at the trial to the admission of evidence on the ground that it was obtained by an unlawful search and seizure, may not raise the question for the first time on appeal. (People v. Richardson (1959) 51 Cal. 2d 445, 447; People v. Hyde (1958) 51 Cal. 2d 152, 157; People v. Hunter (1963) 218 Cal. App. 2d 385, 394; People v. Gurrola (1963) 218 Cal. App. 2d 349, 354; see generally 3 Cal. Jur. 2d, § 140, p. 604; Witkin, Cal. Evidence, § 700, p. 732.)

However in People v. Kitchens (1956) 46 Cal. 2d 260, 262-263, where the trial was had before the decision in People v. Cahan (1955) 44 Cal. 2d 434, the court said: "Although we adhere to the rule that ordinarily the admissibility of evidence will not be reviewed on appeal in the absence of a proper objection in the trial court, we conclude that it is not applicable to appeals based on the admission of illegally obtained evidence in cases that were tried before the Cahan decision. This practice was adopted by the federal courts following the decision of the United States Supreme Court in McNabb v. United States, 318 U.S. 332 [63 S.Ct. 608, 87 L.Ed. 819], holding confessions obtained during a period of illegal detention inad-

* The record shows that when this exhibit was first marked for identification only, during the first part of the testimony of the witness Groom, it embraced only the last three objects. Later on in his testimony, Groom referred to the paper from the glove compartment which had been made part of the same exhibit for identification.

[fol. 334] missible even if voluntarily made. [Citations.] A contrary holding would place an unreasonable burden on defendants to anticipate unforeseen changes in the law and encourage fruitless objections in other situations where defendants might hope that an established rule of evidence would be changed on appeal. Moreover, in view of the decisions of this court prior to *People v. Cahan*, supra, an objection would have been futile, and "The law neither does nor requires idle acts." (Civ. Cod, § 3532.)"

We observe that the case at bench was tried in April 1962 and therefor before the decision of *People v. Burke*, supra, 61 Cal. 2d 575 on July 30, 1964. Applying the rationale of *Kitchens*, we conclude that the general rule of appellate review should not be made applicable here since defendant could not have anticipated the change in the law in respect to searches of impounded automobiles in the lawful custody of the authorities and since we think any objection he would have made would have been futile in view of the prior decisions of appellate courts (see fn. 5, ante) holding in effect that legal custody of the car imparted legal possession of the contents.

Nevertheless, although we are of the view that the admission in evidence of the piece of brown paper was error which defendant is entitled to assert on appeal, we have concluded that such error was not sufficiently prejudicial under either test of prejudice urged by defendant to require a reversal.

Defendant argues that there was not only a reasonable possibility but also a reasonable probability that the piece of paper contributed to his conviction. In support of this [fol. 335] argument he underscores the following alleged "weaknesses" in the evidence against him: The unreliability of the informer Green; the failure to search the telephone booth; the failure to find the marked money; the conflict in the testimony of Groom and Sullivan as to Green's position at the Oldsmobile; the testimony of the agents that the person in the Oldsmobile "appeared to be" defendant; and the failure to discover any other heroin on defendant's person or in his car or residence.

The record before us shows that defendant was tried and convicted for selling heroin to Green at Newell's Market on December 21, 1961. Contrary to defendant's ap-

parent claim, this is not a case where defendant was arrested upon information received from an informant and the reliability of the informant is in issue. (See *Willson v. Superior Court* (1956) 46 Cal. 2d 291, 294-295; *People v. Bates* (1958) 163 Cal. App. 2d 847, 851; *People v. Burke* (1962) 208 Cal. App. 2d 149, 155-156.) Here the evidence set forth in detail by us at the beginning of this opinion establishes the sale by sufficient circumstantial evidence based upon an adequate presale search of the informant followed by a continuous visual observation of him by the officers as a group between the time of said presale search and the time of the ultimate delivery of the heroin by him to the officers after the sale, thereby eliminating any "gap" in the surveillance and any claim of his contact with any person other than defendant. (*People v. Basler* (1963) 217 Cal. App. 2d 389, 394-397; *People v. Robison* (1961) 193 Cal. App. 2d 410, 411-412; *People v. Givens* (1961) 191 Cal. App. 2d 834, 838; *People v. Wilkins* (1960) 178 Cal. App. 2d 242, 245.) This [fol. 336] chain of circumstances has its own factual integrity. It effectively linked defendant to the heroin admitted in evidence and did not require as one of its links the brown piece of paper here in dispute. After an examination of the entire cause, including the evidence, it does not appear to be us to be reasonably probable that a result more favorable to defendant would have been reached in the absence of the above error. We cannot say there has been a miscarriage of justice. (*People v. Watson* (1956) 46 Cal. 2d 818, 836.) Nor, assuming without deciding that, as defendant would have it, we are called upon to inquire whether "there is a reasonable possibility that the evidence complained of might have contributed to the conviction" (*Fahy v. Connecticut* (1963) 375 U.S. 85, 86-87), are we of the opinion that such reasonable possibility here exists. Indeed, in the light of the entire record, including the compelling characteristics of the sale and presale search, we are at a loss to understand what actual probative value this piece of an ordinary paper bag could possibly have, there being no testimony establishing that it was a piece of the same paper in which the heroin was wrapped.

(b) Defendant's right to counsel.

Defendant makes the unique claim that his conviction must be reversed because, if he was present at the time of the sale of heroin, he was not there represented by counsel, citing *Escobedo v. Illinois* (1964) 378 U.S. 478 and *Massiah v. United States* (1964) 377 U.S. 201. Neither case is here applicable. At the time of the sale defendant was neither in custody (*Escobedo*) nor under indictment (*Massiah*).

[fol. 337] 2. *The assault.*

Defendant contends that his act of biting Agent Groom's finger was not unlawful since Groom was violating defendant's constitutional rights by trying to forcibly extract material from defendant's mouth and defendant therefore could use reasonable means to forestall such violation.

This contention is essentially one that the evidence is insufficient to support the verdict. However, the evidence viewed as it must be in the light favorable to the People does not show that Agent Groom deliberately put his finger in defendant's mouth. Groom's testimony definitely states that he tried to grab defendant's hand in order to prevent the latter from putting the package in his mouth and that defendant thereupon "forced my finger in with the package and everything went in together." The trier of fact was warranted in concluding that this was an involuntary act on Groom's part and the subsequent chewing of the finger was a wilful act on defendant's part. The evidence, thus viewed, does not establish that Groom was engaged in "conduct that shocks the conscience" (*Rochin v. California* (1952) 342 U.S. 165, 172) or was in the process of using brutal and shocking force upon defendant so as to compel the conclusion that defendant's rights were being violated. (See *People v. Martinez* (1954) 130 Cal. App. 2d 54, 56; *People v. Sevilla* (1961) 192 Cal. App. 2d 570, 574-575; *People v. Erickson* (1962) 210 Cal. App. 2d 177, 180-182.) Defendant's arguments to the contrary, including his claims that Groom's testimony is improbable, are more properly addressed to the trier of fact than to this court.

[fol. 338] We conclude that defendant's conviction of simple assault is supported by the evidence. His extrajudicial statement relating to his commission of this offense will be dealt with under the next heading.

3. *Defendant's incriminating statements.*

Defendant contends that the admission in evidence of an incriminating statement made by him in reference to his biting Agent Groom's finger constitutes reversible error under the rule announced in *Escobedo v. Illinois*, supra, 378 U.S. 478, and followed in *People v. Dorado* (1965) 62 A.C. 350. At oral argument our attention was directed to other incriminating statements to which these rules may have application.

We first set forth the pertinent facts. Defendant was interrogated on the day after his arrest in the vice office of the Richmond Police Department. Six officers, including Agent Groom, were present.

At the trial, Groom testified that at the above interrogation he asked defendant what the latter had put in his mouth when he was arrested and defendant replied that it was a marijuana cigarette. Groom then said that it didn't look like a marijuana cigarette and defendant replied that he had folded it in half. Groom then asked if he had it wrapped and defendant said it was wrapped in brown paper. According to Groom's testimony on cross and redirect examination, defendant later on in the same interview said that he had possibly swallowed some breath pills.

Groom further testified that during the same interview he said to defendant "You would have been better off if [fol. 339] you hadn't chewed my finger" and that defendant replied "that he was sorry, but he had heard about people getting choked and he thought that he might be getting choked."

In addition, as we have already pointed out, Groom in narrating defendant's arrest testified that when he first grabbed defendant's wrist the latter stated that there were marijuana cigarettes over the sun visor of the car but that he had not put them there.

Following the decision of the Supreme Court of the United States in *Escobedo v. Illinois*, supra, 378 U.S. 478,

the Supreme Court of California held in *People v. Dorado*, supra, 62 A.C. 350, 365-366, "that defendant's confession could not properly be introduced into evidence because (1) the investigation was no longer a general inquiry into an unsolved crime but had begun to focus on a particular suspect, (2) the suspect was in custody, (3) the authorities had carried out a process of interrogations that lent itself to eliciting incriminating statements, (4) the authorities had not effectively informed defendant of his right to counsel or of his absolute right to remain silent, and no evidence establishes that he had waived these rights."

In respect to the first statement by defendant that he was chewing a marijuana cigarette, we are satisfied that all of the conditions set forth in *Dorado* have been met and that the admission of such statement was error. At that time the investigation had focused on defendant and he was in custody, these two circumstances being encompassed by defendant's arrest. (*People v. Stewart* (1965) 62 A.C. 597, 603.) It is also clear from an analysis of [fol. 340] "the total situation which envelopes the questioning" (*People v. Stewart*, supra, at p. 605) that the officers were then carrying out "a process of interrogations that lent itself to eliciting incriminating statements." (*People v. Dorado*, supra, 62 A.C. 350, 365-366.) Finally, the record fails to show that defendant was advised of his right to counsel or of his absolute right to remain silent or that defendant waived these rights so that the fourth condition of the *Dorado* rule is satisfied. (*People v. Stewart*, supra, at p. 607.)

The foregoing statements obviously are not a confession of the crime charged (sale of heroin) and do not therefore constitute reversible error. (*People v. Dorado*, supra, 62 A.C. 350, 368; *People v. Finn* (1965) 232 A.C.A. 515, 519-522.) It is arguable that defendant's statement that the cigarette was wrapped in brown paper may have some relevancy as an admission since the heroin delivered earlier in the day by defendant to Green was wrapped in brown paper. We feel that to give this passing general reference to "brown" paper any significance is merely to indulge in speculation. The Attorney General makes no point of it. The balance of the statement is not "relative

to the offense" with which defendant was charged. (Cf. *People v. Atchley* (1959) 53 Cal. 2d 160, 170, appeal dismissed 366 U.S. 207.) The admission of these first statements was not prejudicial in the light of the entire record.

The other two statements set forth above do not fall within the *Dorado* rule. Defendant's reply to Groom in reference to "chewing" the latter's finger was not incriminating but merely an apology susceptible of inferences favorable rather than unfavorable to defendant. Defendant's statement in reference to marijuana cigarettes un- [fol. 341] der the sun visor was spontaneously made, before he was in custody and without any process of interrogation.

4. *Defendant's additional contentions.*

We briefly dispose of certain other contentions made by defendant in his opening brief filed by him in propria persona. (See fn. 1, *ante*.)

First: Defendant claims that he was denied a fair trial because the court expressed an opinion of his guilt before the defense presented any evidence. The claim has no merit. Our examination of that portion of the record to which defendant refers indicates merely that the court, on denying defendant's motion for an acquittal at the conclusion of the prosecution's case in chief, observed that the People had made out a *prima facie* case.

Second: Defendant raises the lack of probable cause for his arrest on the grounds that Green was not a reliable informant. As we have already explained, defendant's arrest is not predicated on this basis.

Third: Defendant claims that the search of his room was illegal. In the first place, it was made with the consent of his aunt in whose house defendant lived. Furthermore no evidence produced by such search was introduced against defendant.

Fourth: It is also urged that his statements about marijuana made at the time of his arrest were coerced and infected by his illegal arrest. The record does not sustain the claim; moreover it shows that no objection was ever interposed. Finally, as we have explained, the arrest was legal.

[fol. 342] Fifth: He asserts that the prosecutor was guilty of prejudicial misconduct and bad faith during his cross-examination of defendant. Our examination of those portions of the record relied upon discloses no misconduct. Except in two instances, defendant made no objection to the questions he now criticizes. In one instance defendant's objection as to the competency, relevancy and materiality of the information sought was properly overruled. In the other instance, also embraced by defendant's complaint, his objection was sustained.

Sixth: Defendant claims that the trial court erred in receiving in evidence Agent Armenta's testimony as to the telephone conversation between Green and "Joe" which Armenta heard by the use of a listening device. It is urged that this evidence was obtained in violation of the Federal Communications Act (47 U.S.C. § 605) and Penal Code section, 640. The conversation was not intercepted by the authorities in violation of either of these two statutes because the interception was authorized and consented to by Green. (People v. Malotte (1956) 46 Cal. 2d 59, 64; Rathbun v. United States (1957) 355 U.S. 107, 109.)

Seventh: Defendant argues that his trial counsel was incompetent in conducting his defense so that he was denied proper representation at the trial. The record establishes that defendant was ably represented as indeed the court pointed out to defendant at the conclusion of the trial. The charge is groundless. (People v. Ford (1962) 200 Cal. App. 2d 905, 914.)

We have considered the other points raised by defendant [fol. 343] in his brief filed in propria persona and have concluded that they are without merit and need not be discussed in detail.

The judgment is affirmed.

SULLIVAN, P. J.

WE CONCUR:

MOLINARI, J.

SIMS, J.

[fol. 344]

Order Due

July 23, 1965

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA
IN BANK

1st District, Division 1, Crim. No. 4233

[File Endorsement Omitted]

PEOPLE

v.

COOPER

ORDER DENYING HEARING
AFTER JUDGMENT BY DISTRICT COURT OF APPEAL—
Filed July 21, 1965

Traynor, C.J., did not participate.

Appellant's petition for hearing DENIED.

I, WILLIAM I. SULLIVAN, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.

Witness my hand and the seal of the Court this 21st day of July A.D. 1965.

WILLIAM L. SULLIVAN, Clerk

By /s/ R. C. Matteoli
Deputy Clerk

TOBRINER,
Acting Chief Justice

[fol. 345]

SUPREME COURT OF THE UNITED STATES

No. 700 Misc., October Term, 1965

JOE NATHAN COOPER, PETITIONER

v.

CALIFORNIA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF
CERTIORARI—April 18, 1966

On petition for writ of Certiorari to the Supreme Court of the State of California.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1224, placed on the summary calendar, and set for oral argument immediately following No. 1156.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 103

JOE NATHAN COOPER,

Petitioner,

vs.

CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE
STATE OF CALIFORNIA

BRIEF FOR THE PETITIONER

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